LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

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THE QUÉBEC OMBUDSMAN

Assemblée nationale
Québec

THE ELECTED REPRESENTATIVES OF THE YEAR 2000: PROACTIVE, NOT REACTIVE, LAWMAKERS

29TH ANNUAL REPORT 1998-1999

The masculine form is used in this text to designate both men and women.

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Mr. Jean-Pierre Charbonneau
The Speaker of the National Assembly
Hôtel du Parlement
Québec City (Québec) G1A 1A4

Mr. Speaker:

I have the honour of presenting you with the *29th Annual Report of the Québec Ombudsman*, entitled "The Elected Representatives of the Year 2000: Proactive, Not Reactive, Lawmakers" and covering the period of April 1, 1998, to March 31, 1999.

I sincerely hope that this report may, once again, help to revive the principles of good management and to foster better quality service for all our citizens.

Yours sincerely,

Daniel Jacoby, Lawyer
Québec Ombudsman

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THE QUÉBEC OMBUDSMAN'S ANNUAL ASSESSMENT ADDRESSED TO MEMBERS OF THE NATIONAL ASSEMBLY

Can foul-ups be avoided when implementing government reforms?

1. MNAs AND GOVERNMENT REFORMS

At the end of this year, as an appointee of the National Assembly of Québec, I address my report to the elected members, as well as to the government administration and to all citizens of Québec.

My assessment will focus essentially on the foul-ups caused all too often by the implementation of laws and major reforms, errors generating thousands of cases of injustice toward citizens, often over long periods of time.

I am addressing MNAs who, in their role as lawmakers, discuss and adopt bills. I actually believe that "the real life of a law", that is, its application through administrative decisions, substantially escapes the control of the National Assembly; in the process, the way it is applied ends up not doing justice to the law, to the detriment of our citizens and often to the surprise of the elected members themselves.

Is there a way to prevent, or at least to limit, the failures and the foul-ups which bedevil government reforms?

Can MNAs play a proactive role in this type of prevention, at a time when it is desirable and has even been concretely suggested that these lawmakers be provided with the necessary means to fully carry out their role as lawmakers and as watchdogs monitoring the acts of the government administration and the executive authority?

Can the principles of good management (good governance) be integrated into the preparatory phases of legislation?

Can a "partnership" be developed between the legislative branch and the executive and administrative authority so as to avoid the infringement or compromising of citizens' rights by a faulty implementation of a law?

Before giving examples of foul-ups and offering a few suggestions for rectifying them, for the benefit of both MNAs and of the government, I will briefly outline the complementary nature of the role played by elected members and of the functions carried out by agencies which are exclusively and directly under the jurisdiction of the National Assembly. I will also summarize the procedures for adopting the legislation which serves as the basis for major reforms and discuss the relative powerlessness of MNAs, given the tools currently available to them, to intervene during the various phases involved in designing and organizing the implementation of legislative initiatives.

1.1 In various ways, MNAs are ombudsmen too

There is no doubt that all MNAs, in their own way, play the role of ombudsmen since, in particular as concerns the application of laws, they intervene with the government and public services in order to facilitate the settlement of conflicts or misunderstandings that arise between the government administration and the population that they represent; our elected representatives see to it that seemingly unjust decisions are changed, and in many cases, they mediate between civil servants and ordinary citizens. In any event, MNAs play the role of watchdog by monitoring the government administration.

It also happens that they refer their constituents' complaints to the Québec Ombudsman, since they do not have at their disposal all the means and powers possessed by the latter.

The complementary nature of the role of MNA and that of the Québec Ombudsman

In 1968, when the institution of Québec Ombudsman was created, the lawmakers were aware that MNAs could not, by themselves, take on all the tasks inherent in their role of watchdogs monitoring the executive power and the government administration and that they could not be specialists in all areas, considering the multiplicity and complexity of laws and government programs.

The lawmakers also realized that the citizens of a given riding would not always turn to their MNA, given their varying political convictions. Moreover, MNAs, as members of a political party, must follow the party line, and in so doing, they can legitimately be in disagreement with the grievances of a citizen who might challenge the positions of their political party. Finally, it was not seen as a good idea for each elected representative to have the power to act as a one-person board of inquiry in cases of individual complaints.

For these reasons, the lawmakers created the office of Québec Ombudsman in order to help MNAs and to round out their role, so to speak. This situation is not unique: in contemporary democracies, there are approximately 350 ombudsmen at work in 95 countries in North America, Latin America, Asia, the South Pacific, Africa, the Indian Ocean and Europe. Wherever this office exists, the Ombudsman is an independent official under the jurisdiction of parliament, or in certain presidential regimes, of the head of state. In any event, the ombudsmen are completely independent, and no authority has the right to interfere with their work or to give them orders.

The lawmakers thus wanted to establish an independent agency, provided with specific powers, to which citizens, no matter what their personal situation or their political convictions, could ultimately turn when they believed, rightly or wrongly, that they had been

wronged by the government administration or by certain policies. And citizens could reasonably expect that all aspects of their cases would be examined without prejudice.

The lawmakers finally considered that the elected representatives and the Ombudsman play complementary roles in the recognition, exercise and defence of citizens' rights.

1.2 MNAs and independent agencies under the jurisdiction of the National Assembly

The National Assembly is seconded by agencies that are independent of the government administration, in order to add to the constitutionally recognized control that this body must exercise over the executive and administrative branches; these agencies include the offices of the Québec Ombudsman, the Auditor General and the Director General of Elections.

The main mandate of the Director General of Elections is to make sure that elections are held in conformity with the law, that is, democratically, regularly and freely; he combats fraud and electoral irregularities and can, if necessary, institute criminal proceedings against offenders; he has the responsibility of recognizing political parties for electoral purposes and of supervising the electoral expenditures of these parties; he is also in charge of the electoral map. It is therefore understandable that the Director General of Elections must, in order to carry out his mandate properly, be independent of political parties, of the government and of its administration.

The mandate of the Auditor General, who also reports directly to the National Assembly, is to check on the proper use of public finances and on the optimal use of other resources. It is also easy to understand why the Auditor General must be independent of MNAs, as well as of the government and its administration.

As has been mentioned, the same holds true for the Québec Ombudsman.

It must also be noted that even if the National Assembly approves the appointments of members of certain government agencies, for instance, the Commission des droits de la personne et des droits de la jeunesse, the Commission d'accès à l'information and the Commission de la fonction publique, these agencies, although provided with a high degree of autonomy in their operations, are part of the government and not of the National Assembly, since they fall under the responsibility of government ministers.

1.3 The indisputable role of MNAs

Our elected members carry out an extremely important mission: in addition to being ombudsmen in many ways, they participate actively in the government by orienting policies, controlling the actions of the administration through exercises in accountability (study of

credits, financial commitments, mandates of initiatives, etc.) and sitting on specialized parliamentary committees.

MNAs in their role as lawmakers

The National Assembly is a sovereign body, and this sovereignty takes on its purest form in the studying and adopting of legislation presented to it by the government.

The genesis of legislation: the government's initiative

A government decision precedes the tabling of any legislation. All bills are initiated by a minister of the government and must be previously approved by the cabinet before being tabled at the National Assembly.

Preparing the ground for legislation

Bills are often prepared with the help of civil servants from the department or agency involved and, at times, by people from the outside. If the minister decides that the time has come to table a piece of legislation, the bill will be drawn up by specialists, that is, by legal experts who work with the minister and the personnel of the department involved to organize the wording of the legislation and to prepare for its implementation and application.

Finally, certain central agencies, such as the Comité des priorités and the Comité de législation du Conseil des ministres, as well as the Conseil de trésor, intervene at various stages, generally before the bill is actually tabled.

Reminder about the process of adopting legislation

- The government proposes a bill to the National Assembly;
- The bill is studied by the appropriate National Assembly committees, made up of MNAs;
- These committees present a report on their work and their conclusions to the National Assembly in a plenary session;
- The bill is then adopted by the National Assembly in a plenary session, with or without amendments;
- The bill is approved by the lieutenant-governor and becomes law;
- The legislation thus approved comes into force on the day of its approval or at a later date or dates.

1.4 Implementing and applying legislation: the invisible side of legislation

Legislation is implemented and applied by public services.

The "visible" and "invisible" sides of legislation.

At the present time, MNAs do not have the appropriate tools to prevent foul-ups in the implementing of legislation. Having been a legal advisor and a deputy minister myself, I know that during the debates concerning a given piece of legislation and at the time of its adoption, our elected representatives keep a sharp eye on the "visible side" of the legislation, that is, its actual wording, the principles it conveys and its overall content; but it is very difficult for MNAs to influence the "invisible side" of legislation.

The "invisible side" is precisely the sum of internal decisions made by the government administration when it plans and organizes the implementation of a law. To this end, the administration carries out a strategic operation, while having a strong influence when it comes to determining the means to attain the objectives of the law. The government administration also carries out operational planning, which involves choosing the procedures and methods for the day-to-day application of the law. During this stage, the administration influences the resources to be used, the organization of procedures and the structure to be developed. It draws up all the regulations for applying the law, and the administrative policies, the instructions, the handbooks, the information tools and the operational procedures for its implementation.

In short, the government administration plays a major role in planning and organizing the implementation of legislation during the preparatory phases. This aspect of legislation, its "invisible side", is beyond the control of the National Assembly. And yet, this aspect is as important as its "visible side", since citizens will feel the real impact of the legislation beginning at the moment when they become the people who must "live with the law".

1.5 The impact and application of legislation

If legislation is applied harmoniously and is brought in without any major clashes, citizens will be satisfied with it.

On the other hand, if this process involves foul-ups, instances of injustice and false starts, the citizens concerned and those who know the facts will express their dissatisfaction and will have a poor opinion of the legislation, even if the law in itself is a good one.

The result of foul-ups in the implementation of legislation: citizens become very critical, grumble to the authorities, and present thousands of complaints to civil servants, ministers,

MNAs and agencies responsible for defending citizens' rights. In many cases, such situations could be avoided.

Elected representatives can have a major influence in helping to avoid these sorts of situations in the future; they could play a proactive role in this regard. We will explore this possibility later on.

2. ASSESSING RECENT REFORMS: WHAT CITIZENS HAVE GAINED AND LOST

Over the last few years, one government reform has followed another at an ever-increasing rate. To its credit, the government has generally initiated these reforms in order to improve public programs for the benefit of all citizens; nonetheless, their implementation has often been far from smooth, and a number of reforms continue to be plagued by major problems, even several years after they were established. This is why I speak of "what citizens have gained and lost."

I have noted that the same mistakes tend to be repeated over and over again: from one department to another, from one program to another, similar across-the-board problems continue to crop up. Everyone comes out a loser: citizens, first and foremost, but also the government and the executive authority, not to mention individual MNAs. (And we also must not forget the negative effects on public finances.) Government personnel are often called upon to take the necessary remedial measures so that reforms, once implemented, function more smoothly. And the longer such problems persist, the higher the price paid by each and every citizen.

Are all the principles of good management (good governance) taken into account when a given reform is designed and established? What are the bottom-line conditions for avoiding systematic false starts when a reform is implemented? These question certainly deserve to be answered, and, before going any further, I am going to provide some illustrations of this "administrative sickness" and then offer a few reflections on the situation before drawing certain conclusions.

2.1 Reforms that started off badly

2.1.1 The reform of support payments (which came into force in December 1995)[1]

Reducing child poverty

As a means of reducing the impoverishment of people (and, in particular, of their children) who either were not receiving their support payments, or were receiving them irregularly or only partially, the government, quite rightly, revised support-collection methods by introducing, in particular, deductions at source from the income of debtors and transferring the responsibility for collection from the ministère de la Justice to the ministère du Revenu.

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[1] For a look at the recent situation, please consult pages 103 and following of this report, under the heading ministère du Revenu.

An overly hasty reform

The *Act facilitating the payment of support* came into force in December 1995, six months earlier than had been announced. This occurred in spite of the warning issued by the Québec Ombudsman, in March 1995, concerning the dangers of acting too quickly.

With all sorts of problems

From the outset, this reform was plagued by foul-ups: a continual increase in complaints to the Québec Ombudsman, mainly concerning delays in the payment of support, a lack of harmonization between the ministère du Revenu and the ministère de l'Emploi et de la Solidarité, and inadequate explanations received by creditors awaiting support payments. What is more, difficulties also occurred when the reform was implemented; these problems arose due to the mobility of personnel and to their lack of training, as well as to a computer system which was programmed far too hastily. And difficulties persist to this day.

As well as a large number of complaints

In 1996-1997, my office received 332 complaints; these rose to 905 in 1997-1998 and to 962 in 1998-1999. This year, substantiated complaints reached a very high level: in more than 39% of all cases, the complaints of citizens were well founded, and my team and I were obliged to intervene on their behalf.

The ministère du Revenu followed up on most of the general recommendations made at various times by the Québec Ombudsman. Most notably, in June 1998, I released a report which pointed to personnel shortages and computer difficulties. In the autumn of that year, the government provided an additional $2.5 million in funding and added 186 new positions. What is more, after we denounced the inadequate explanations given to creditors, in September 1998 the Department instructed its personnel to provide creditors with all the necessary information, while maintaining the confidentiality of certain highly delicate information. Incidentally, the Department should be congratulated for having greatly reduced waiting periods in the allocating and processing of support-payment files.

Still a puzzle four years later

In spite of everyone's best efforts, the reform is still proving to be a puzzle for a great many people, even though it has now been in force for four years. There seems to be no solution in sight for a number of problems.

Unknown advances

For example, here is a problem which has recently cropped up: according to the law, the Department, on behalf of a debtor, may make advance payments of up to $1000 per month, for a maximum of three months, to a creditor who has been unduly awaiting support. The debtor must reimburse the Department for these advances. However, when a court decision cancels the support payments retroactively and advances have already been paid to the creditor during this period, the creditor must repay them. It must be pointed out that the creditor does not know the actual amounts of these advances; in fact, nobody knows their exact amount since the monthly cheques only indicate that the sum paid "is for support payments". At first, the creditor is very surprised when asked to repay the advances; the latter could not possibly have known that advances were included in the amounts received. In a number of cases, these unexpected repayments become a source of debt, and of anguish.

Thus I intervened in order to see to it that the creditor be given the necessary information at the proper time (and on the monthly cheque), only to learn that the computer system generally cannot determine with any degree of precision how much money was paid in the form of an advance and how much constituted support.

How to get off social assistance

Another ongoing problem: a number of creditors remain on social assistance even though the ministère du Revenu has collected their support payments. This happens because of communication breakdowns between the two departments. In November 1997, an agreement concerning the electronic exchange of information was reached between the ministère du Revenu and the ministère de l'Emploi et de la Solidarité, but the project has been shelved until further notice. And yet with the adoption of the measure respecting the exemption for support-payment revenue in June 1998, it has become imperative that action be taken without further delay.

Cheaters

Lastly, under the 1995 system, it should be possible to apprehend debtors who are in bad faith and who, of their own free will, have shirked on their payments or simply disappeared. However, no particular priority has been given to support payments by the special unit in charge of investigations in the field.

In conclusion, some five years after its implementation, this reform still does not obey all the principles of good management (good governance).

2.1.2 The change in direction for correctional services (initiated in 1996)[2]

Budget cutbacks and high ideals

Since 1995, the ministère de la Sécurité publique, the department in charge of Québec prisons, has trimmed tens of millions of dollars from the correctional services budget and has substantially reduced its personnel. Five detention centres were closed in 1996. It was felt that Québec's incarceration rate of 104 prisoners per 100,000 inhabitants (as compared to 116 for the rest of Canada and 519 for the United States) should be brought down to the generally lower rate observed in Europe.

The objective of the change in direction initiated by the correctional services has been to promote alternatives to incarceration, with the latter treatment to be reserved for criminals who constitute a real danger for society. These other alternatives include: suspended sentences, the payment of damages, fines, community work, the suspension of privileges and/or licences, the non-judicial treatment of certain infractions, and recourse to mediation.

One of the objectives of the shift has been to reduce the prisoner population by 10%. According to the Department, it was necessary to go from a maximum capacity of 3,500 inmates (1995) to 3,150 (1998). However, other documents from the same department told a different story: there were 3,904 spaces available in 1995-1996 and 3,801 in 1996-1997.

A great many complaints and a special investigation

In the meantime, the Québec Ombudsman received 2,000 complaints in 1996-1997, 2,960 in 1997-1998 and 3,321 in 1998-1999. The increase was particularly impressive for large-scale centres: an increase of 157% over 3 years, with a 35% rate of substantiated complaints.

Given this disquieting trend, at the end of 1997 I initiated a system-wide study of Québec's correctional services. The study's findings pointed to a number of foul-ups and violations of basic rights.

A disturbing report

The report, released at the beginning of 1999, contained 54 recommendations grouped under nine headings.

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[2] For this year, please consult pages 123 and following of this report, under the heading ministère de la Sécurité publique.

The investigation notably pointed to: the violation of basic rights; an increase in the abuse of power; an increase in criminal activity and drug trafficking within penal institutions; the highest suicide rate in Canada; a relative abandoning of social reintegration activities and programs; problems of cleanliness and hygiene in a number of centres; the inability of correctional services to respond to the needs of inmates afflicted by psychological disorders; an absence of coordination among various government departments; threats to the security of personnel and inmates, due, in large part, to the presence of criminal groups; and the very slight impact of measures other than incarceration.

The ministère de la Sécurité publique recognized that, in general, the report was well founded and promised an action plan to implement nearly all of its recommendations.

But a great many problems remain

Today's situation still cries out for improvement, but departmental personnel has shown a strong desire to iron things out, and this is a very good sign.

The objectives of the change in direction are far from having been reached, and the inmate population has not yet been reduced. It is obvious that the reform has, up until now, been severely hampered by cuts in the budget and in personnel; in particular, there are not enough available resources to develop alternatives to incarceration, nor to attend to the mental health, addiction and suicide problems plaguing prison inmates.

I must note, here once again, that the principles of good management (good governance) have not always been followed as a means of successfully implementing this reform.

2.1.3 The public prescription drug insurance plan (which came into effect on August 1, 1996, and January 1, 1997)[3]

A highly desirable plan

In 1996, the government, through the *Act respecting prescription drug insurance*, created a public drug insurance plan designed to cover more than 1.4 million citizens who, unable to take out private coverage, had previously been forced to pay the entire cost of prescription drugs.

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[3] For an assessment of the current year, please consult pages 145 and following of this report, under the heading Régie de l'assurance-maladie du Québec.

Until 1996, income security recipients and people 65 years of age and older received no-pay or nearly no-pay coverage (a maximum annual premium of $100 for senior citizens); however, in the new legislation, the government abolished this free coverage, a step which enabled it, in part, to fund the new plan.

No-pay coverage was abolished because, it was postulated, income security recipients and senior citizens had been taking too much medication; if they were required to pay for part of their own bill, they would reduce their excessive intake of drugs. This approach was based on a total lack of understanding of these groups; in fact, no serious studies had ever been conducted to substantiate these claims.

Moreover, the reform was at least in part rooted in prejudice, namely the wide-spread perception that those receiving government assistance are rather irresponsible and tend to abuse programs such as the no-pay drug insurance plan.

A warning from the Québec Ombudsman

As of 1996, I informed the minister of health and social services that, in spite of the generosity of the legislation for hundreds of thousands of citizens, the policy potentially placed income security recipients and senior citizens in a precarious position, for they were obliged to pay their quarterly contribution (the maximum for deductibles and coinsurance) all at once. I suggested that individuals regularly taking medication would probably either reduce their prescribed dosage, put off other essential spending or completely deprive themselves of medication due to an inability to make the minimum payment. This prediction was borne out by the facts: at they end of 1996 and the beginning of 1997, the Québec Ombudsman's office received an ever-increasing number of complaints of the above-mentioned nature. In July 1997, the government finally adopted a monthly ceiling for the recipient's contribution. The contribution to be paid to the pharmacist was henceforth to be calculated on a monthly rather than a quarterly basis, thus reducing each individual payment.

A reform involving a certain level of risk

But problems remained for individuals required to take large quantities of medication, and the Québec Ombudsman, among others, once again warned the government concerning the risks its policy entailed. Three more years went by, and it was only after a study was released in March 1999 that the minister of health and social services decided to restore a no-pay system for those required to take a large quantity of medication (income security recipients experiencing mental health problems and senior citizens suffering from chronic illnesses).

Communication breakdowns

Moreover, the rapidity with which the reform was implemented created a great deal of confusion: neither citizens nor pharmacists had obtained the necessary information at the proper moment and the computer system was not working. Fortunately, the pharmacists, who were the first to feel the repercussions of the policy, showed openness and compassion (they were not immediately reimbursed), making every effort not to unduly penalize senior citizens and income security recipients.

In the final analysis, my office received numerous complaints due to the deficiencies of the reform: 716 between August 1 and March 31, 1997, 284 for 1997-1998, and 100 for 1998-1999.

And problems still persist

Today, other problems remain, in particular the excessive cost of the plan for low-income individuals who are not recognized as such since they receive neither income security benefits nor the guaranteed income supplement and thus do not appear in data files.

Unwanted package plans

The plan also stipulates that insurance companies must not only cover its current policy holders, but also those who, by law, are required to take out a group insurance contract, as well as their spouses and dependent children. Most insurance companies have forced these individuals to take out a package plan which includes a range of services that go well beyond drug insurance. Such a policy is much more costly than the public plan which covers only medication. In one case, for example, a part-time worker, with an annual income of $20,000 had to put out an additional $1,400 in order to insure his wife and child. In order to help solve this sort of problem, the Department apparently intervened on a case-by-case basis, but sometimes to no avail. In any case, the government did not require insurance companies to offer a simple drug insurance plan (rather than a range of services on a take-it-or-leave-it basis) because it firmly – and erroneously – believed that, in the final analysis, the market would simply regulate itself.

Thus the new public plan has had a number of harmful effects, including the increased exclusion of our most disadvantaged citizens, the health problems which many of them now face, the unjustified costs incurred by group insurance policy holders who are required to take out protection for their immediate families, and the non-recognition of certain low-income citizens for purposes of the plan.

One can only conclude that, in general, the reform has not obeyed, and still does not obey, all the principles of good management (good governance).

2.1.4 The reform of the immigrant sponsorship system (December 1995)[4]

Family immigration

Québec residents may, if they act as guarantors, sponsor members of their family living in foreign countries, enabling the latter to come to live in Québec. This has been made possible in the name of family reunification, a principle advocated by both the Québec and Canadian governments.

In order to sponsor an immigrant, the guarantor must be financially solvent (unless the sponsored person is a spouse) and must undertake to provide financial support for a certain number of years, according to the terms of an agreement.

If, once in the country, the sponsored person decides not to live with the guarantor and finds a job and then loses it, he or she will be entitled to receive income security benefits, which the government, in accordance with the agreement, can then claim as a reimbursement from the guarantor.

A non-standard practice

However, in a number of cases, when the sponsored party applied for income security benefits, the authorities did not inform the guarantor of the situation. If the authorities had done so, as they were supposed to, the guarantor could have, if necessary, offered to lodge and generally provide basic support for the sponsored party, who would thus not have had to apply for social assistance.

Surprising debts

Some guarantors learned, a few years after having received a family member, that they owed the government money. For instance, a couple had sponsored the husband's father in 1987 and was thereafter asked to repay $37,117, even though the guarantors had not actually been informed of the fact that the father had applied for income security benefits.

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[4] For an assessment of the current year, please consult pages 93 and following of this report, under the heading ministère des Relations avec les citoyens et de l'Immigration.

Guarantors penalized twice

To complicate maters even further, guarantors sometimes lose their jobs and themselves become income security recipients (after having received all the employment insurance benefits to which they are entitled, if applicable). Currently, a guarantor's social assistance benefits are reduced by $56 per month in order to reimburse the sums paid to the sponsored party, who continues to receive full benefits. What is more, the assessment of a guarantor's financial situation conducted by the authorities at the time of the application for sponsorship was sometimes carried out in a slapdash manner or was completely unrealistic. For example, one guarantor was authorized to sponsor seventeen family members! Lastly, immigrants who didn't understand French have reached sponsorship agreements without actually knowing just what they were agreeing to.

The pilot project

In 1995, the two departments in question, as a means of making certain guarantors more accountable, launched a pilot project designed to recover the sums paid to sponsored parties as social assistance benefits. This project became a permanent program in December of that same year. What is more, *An act respecting income security* was amended to extend the recovery period from 3 to 5 years and to stipulate that requests for repayment be clearly addressed to the guarantor.

The two departments agreed to coordinate their actions so that in the future the guarantor would be notified of any applications for social assistance filed by a sponsored party. Also, more realistic assessments of the guarantor's financial situation are now being carried out, and today's guarantors and sponsored parties clearly understand the terms of the sponsorship agreement.

A special report

In 1997, I felt the need to table a special report in an attempt both to rectify and to prevent bureaucratic foul-ups and instances of flagrant injustice involving the immigrant sponsorship plan. The departments in question have, up until now, followed up on a number of recommendations contained in the report, in particular as concerns the method for calculating repayments. Since the autumn of 1998, 3,000 files have been reviewed involving sums in the order of $10 million.

Injustices which persist

However, here's the rub: government authorities still continue to claim reimbursements from guarantors who, in my opinion, are under no obligation to pay since they either did not

understand the scope of their commitment, their financial capacity was assessed in a slipshod manner, or the authorities failed to inform them of an application for social assistance filed by the sponsored parties, with the result that they were not able to offer accommodations as needed.

In conclusion, the reform has been marred by foul-ups and instances of injustice, which continue to this day because the principles of good management (good governance) have not entirely been taken into account. Thus numerous complaints have reached my desk: 120 in 1996-1997; 484 in 1997-1998 and 242 in 1998-1999.

2.1.5 Other problematic reforms and programs

These are not the only reforms characterized by certain problematic features. Citizens and MNAs alike are well aware that a number of other important reforms have caused (and continue to cause) foul-ups, errors and even instances of flagrant injustice. I will describe only a few of them:

In youth centres: The Québec Ombudsman has had the opportunity to study the phenomenon of suicide among young people who spend time in youth centres. In conjunction with the Collège des médecins and the Association des centres jeunesse, the Ombudsman tabled a report which underscored the lack of suicide-detection training for certain intervenors, the need for coordination among the various social and medical services, the necessity of developing measurement tools acceptable to all intervenors, and the urgent need to establish functional linkage between the social and medical sectors.

Québec has one of the highest youth suicide rates in the world,[5] and, incidentally, wins the prize hands down for prison suicide.[6]

What is more, the situation has not yet improved in youth centres. In spite of $27 million in new money which was pumped into the network, it is still underfunded. Moreover, interventions occur too late. (We only have to look at the Beaumont affair concerning which the Commission des droits de la personne et des droits de la jeunesse has tabled a report.) There is no individualized intervention plan designed for young people in difficulty, and waiting lists are still too long.

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[5] Please consult pages 117 and following of this report for a summary of *Le suicide chez les usagers des centres jeunesse: il est urgent d'agir*, April, 1999.

[6] See the *Report of the Québec Ombudsman on Québec's Correctional Services*, January 1999.

In the health-care sector: Problems with health-care reform, the restructuring of the network, the shift toward ambulatory care, emergency services, the shortage of workers and specialists, waiting lists, etc. have had a cruel impact upon users of the system. Solutions need to be found for the many shortcomings of **the office of the Public Curator**, the **education** sector, the AFE concerning **student aid**, and, of course, **Emploi-Québec**.

2.2 Findings, conclusions and proposals

2.2.1 Findings

2.2.1.1 Reforms which are poorly designed or implemented are sources of injustice

The aforementioned examples show to what extent a reform which is implemented too hastily, insufficiently planned or characterized by conflicts between objectives and the means used to attain them can lead to blunders and instances of injustice. Reforms which are poorly designed or implemented put:

Objectives in jeopardy

1. The attaining of the objectives of an act or a government program is sometimes put in jeopardy. For instance, problems in implementing the support payments collection system have jeopardized the very goal of the act itself: to reduce poverty among single-parent families and to foster their financial autonomy. This state of affairs is the result of certain flaws that we have already noted, although it is true that waiting periods for payment are now shorter than they were in the past.

   The objectives set for the reform of Québec's correctional services are still in jeopardy of not being met.

Equality in jeopardy

2. Equality of opportunity is sometimes put in jeopardy. For instance, the non-recognition of an entire category of low-income people by the public drug insurance plan inevitably jeopardizes the principles of equal opportunity and social justice; moreover, this is the result of simple administrative shortcomings. The same principles are threatened when those who are required to take out a group insurance plan are asked to pay exorbitant premiums.

Basic rights in jeopardy

3. Basic human rights are sometimes abrogated or put in jeopardy. For instance, the way the immigrant sponsorship system operates has led (and continues to lead) to denials of justice for a number of sponsors who have not fulfilled their obligations simply because the public authorities did not inform them of these obligations in an appropriate manner or at the proper time. What is more, these individuals belong to groups which to a certain extent are already marginalized.

   The new direction taken by Québec's correctional services, along with budget cutbacks, have led to a flouting not only of the *Acts of Québec* but also of international standards governing conditions for prison inmates, in particular the Standard Minimum Rules for the Treatment of Prisoners.[7]

4. Problematic reforms can also be highly costly from a monetary standpoint and/or entail social costs which are sometimes irreversible.

2.2.1.2 Why foul-ups actually occur

Concerning the reforms already analyzed, foul-ups and abrogations of basic rights are caused by:

- authorities not providing interested parties with all the information they needed at the proper time (regarding, for example, the sponsoring of immigrants, drug insurance, support payments, etc.);
- a computer system which is either flawed or set up too late (affecting support payments and the drug insurance plan);
- a poor understanding of the profile of certain citizen groups (as concerns drug insurance);
- actions based upon speculations or hypotheses never having been subject to serious study (as was the case for the drug insurance plan);
- acting too hastily (affecting the support payment system and the drug insurance plan);

[7] First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955. Canada officially endorsed these rules in June 1975.

- the lack of coordination between the various departments involved in implementing a given reform (as has characterized reforms in the area of correctional services, support payments, the sponsorship of immigrants, etc.);

- unacceptable delays in rectifying errors and flagrant instances of injustice caused by a given reform (for instance, as concerns drug insurance or correctional services);

- too much time being taken to reduce unacceptably long waiting periods in the processing of various files (support payment files, for example);

- a lack of training for personnel, or information which is slow in coming, as concerns new reforms or programs (correctional services, the collection of support payments, family violence in the area of immigrant sponsorship, etc.);

- contradictions, or possible contradictions, between objectives and the means used to attain them (correctional services);

- applying a program retroactively (as in the case of immigrant sponsorship);

- a practically meaningless consultation (or no consultation at all) of those affected by a program (immigrant sponsorship, drug insurance);

- laws which are not respected (correctional services, immigrant sponsorship).

2.2.1.3 Principles of good management (good governance)

The Social Pact

In the Ombudsman's *Social Pact* (1993), I point to certain methods of good management. Here are a few excerpts from this publication:

– "Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice."

– "Consult the client group concerned when government programs are developed and implemented, as well as when changes are made to these programs."

– "Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency."

- " When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration."

- " Determine the real causes of a deficiency or act of negligence, so as to avoid systematically using the excuse of budget cuts to justify shortcomings."

- " Allocate resources so as to ensure that citizens are not the first and only victims of budget cuts."

- " Provide services and information, and convey decisions, within a reasonable length of time."

- " Give citizens all the information they need in a timely manner."

- " Abide by special statues and regulations as well as regular legislation."

- " Promote respect for basic rights and freedoms in each action that is taken."

- " Avoid all forms of discrimination or unequal treatment."

- " Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate."

The dimensions of efficiency

In 1996, the Canadian Comprehensive Auditing Foundation published the 12 dimensions or criteria which make it possible to measure the efficiency of a company or a public organization.[8] Here I will cite four that, in my view, seem to have a direct link with the previous analysis:

Management direction

- the extent to which the objectives of an organization, its component programs or lines of business, and its employees, are clear, well-integrated and understood, and appropriately reflected in the organization's plans, structure, delegations of authority and decision-making processes;

[8] The Canadian Comprehensive Auditing Foundation. *Efficiency*. 1987.

Relevance

- the extent to which a program or line of business continues to make sense in regard to the problems or conditions to which it is intended to respond;

Acceptance

- the extent to which the constituencies or customers for whom a program or line of business is designed judge it to be satisfactory;

Secondary impacts

- the extent to which other significant consequences, either intended or unintended and either positive or negative, have occurred.

2.2.1.4 A few guidelines for avoiding foul-ups

Some basic things to remember

At this point, by taking into account the foul-ups in the reforms analyzed and drawing inspiration from the parameters proposed by the Canadian Comprehensive Auditing Foundation, it is possible to suggest a certain number of guidelines for designing and implementing a policy or a program.

1. A prior methodical understanding of the profile and habits of groups directly or indirectly affected as users or intermediaries.

2. A genuine and timely consulting of target groups drawn from the overall target clientele.

3. The systematic rejection of decisions based on prejudice or unverified hypotheses.

4. The guaranteed congruence of means and ends, that is, of the program's actual objectives and the methods adopted to attain them.

5. The planning and coordination of the design and implementation phases of a given program, supervised by a group of generalists.

6. Linkage of the various stages of the program over time.

7. The providing of information and/or training, at the proper time, for the personnel or representatives involved in implementing the program.

8. The providing of information and/or training, at the proper time, for the various client groups directly or indirectly targeted by the program.

9. Meaningful testing, at the proper time, of all computer systems.

10. Priority to be given to the proper design and implementation of a given program over requirements whose urgency is neither obvious nor based on logic.

11. The timely identification of complementary or associated government programs as a means of ensuring that the planned reform will be well coordinated and consistently applied.

12. The guarantee of a rapid flow of all information deemed essential to the smooth functioning of all stages of the program.

13. The retroactive application of a given program only if this measure will benefit the general public.

14. The analysis, at the proper time, of the program's effects as concerns any possible risk of violating basic rights.

15. Making sure there are extra funds and/or staff available as a means of rectifying all foul-ups which might occur during the implementing of a program.

16. Taking immediate action whenever all evidence and common sense suggest that a program is putting its client groups at high risk.

17. Taking immediate action to reduce waiting periods in the processing of files.

Favourable conditions

This list is by no means exhaustive, and putting these suggestions into practice will not necessarily result in a flawless program. However, if implemented along with certain other rules, the above-mentioned guidelines will create favourable conditions for optimizing the effects of a given reform.

2.2.1.5 Promoting accountability and a code of ethics

Human error: at the root of each and every foul-up

There is no miracle solution for rectifying the human errors which may occur during the designing and implementing of a given reform. These include mistakes resulting from an overly subjective interpretation of what constitutes a necessary level of information, from skills and aptitudes which are not fully suited to the job at hand, from stress experienced by employees during rush situations, from the lack of coordination among various specialists, from the lack of a comprehensive vision, from nonchalance based on the notion that we can always make adjustments at a later date, from a defeatist attitude on the part of the personnel, and the list could go on and on.

Is there something at work other than human error?

A foul-up is too often justified at the administrative level by explanations which have absolutely no connection to human factors: software problems, a shortage of personnel, insufficient resources, poor logarithms, a faulty procedure, a communication breakdown, too many procedures or too much formality, hasty implementation, a narrow interpretation of the program, etc.

However, these sorts of explanations, which appear technical or impersonal, should not be allowed to conceal the fact that, in the final analysis, somebody somewhere has always made a decision at a certain given point.

Being humble: a rule of good management

In order to rectify the foul-ups and/or instances of injustice caused by a given reform as quickly as possible, those in charge should, first of all, be humble enough to admit that errors might very well have occurred.

Nonetheless, in spite of all the evidence, certain decision-makers will sometimes dispose of problems by denying their existence, by subdividing them, by referring to data or statistics having no direct connection with the actual foul-up, by pointing to surveys with unknown parameters, or, worst of all, by discrediting the messenger rather than discussing the substance of the message. Luckily, these sorts of decision-makers represent the exception, not the rule.

Trivializing problems in this way is incompatible with the goal of fostering accountability and the public rendering of accounts.

Incidentally, a few months or years later, these very same decision-makers or their successors always end up rectifying errors by amending legislation or changing policies.

"Those who do not recognize errors are condemned to repeat them."

If this dictum can be applied to ordinary individuals, it is also relevant for public authorities who have a duty to be transparent and accountable. Cultivating humility could become a rule of good management. The basic premise that there is no room for error at the public authority level should be carefully reconsidered.

2.2.1.6 Conclusion: the crucial role of MNAs at the beginning as well as at the end of the reform process

In conclusion, to help prevent a repetition of past foul-ups, I believe that the elected representatives who are my immediate superiors should be able to take fuller responsibility for past mistakes in order to analyze what went wrong. However, I am also convinced that they do not have all the necessary tools at their disposal to ensure the fully effective management of this process according to the principles of good governance.

This debate could begin at the level of the parliamentary committees most directly concerned. MNAs, assisted by specialists, could, with time, map out orientations and guidelines to govern the design and implementation of government programs for the benefit of their constituents.

Work must be done to root out the underlying causes of foul-ups with prevention as the ultimate objective, and MNAs have an important role to play in this regard. But they must be allowed by play it! With time, it may well become less difficult for them to report to their constituents concerning miscues for which they have never actually been responsible but as a remedy for which they have often passed legislation.

I sincerely hope that the National Assembly may soon fully play the role of watchdog from the beginning to the end of the reform process. Parliamentary control of administrative action after the fact is not enough to ensure good management. Interventions must occur before the process begins. Please allow me then to make a few suggestions for our elected representatives.

3. THE QUÉBEC OMBUDSMAN'S SUGGESTIONS

Given that the major reforms of the last few years have generated and continue to generate numerous complaints on the part of dissatisfied citizens;

Given that the majority of these complaints concern the implementation of these reforms;

Given that a large number of these justified complaints have to do with major foul-ups in the implementation of these reforms;

Given that the effect of these foul-ups is to compromise the objectives of the reforms, create inequality, jeopardize human rights and bring about various cases of injustice;

Given that the causes of the foul-ups recur, to a greater or lesser extent, from one reform to the next (delays, insufficient or belated information, lack of training of personnel, inaccurate assessment of resources, cumbersome formalities, etc.);

Given that it would be desirable, for the greater good of the population, to avoid the reappearance of these foul-ups in future reforms;

Given that it is in the interest of elected representatives to prevent these foul-ups from being systematically repeated from one legislative initiative to the next;

Given that MNAs do not have the opportunity of intervening effectively to prevent these foul-ups;

Given that the private member's bill, the proposed *Loi sur la gestion gouvernementale (Act respecting government administration)*, appended to the policy statement released by the minister of state for administration and the public service, does not take up this subject;

Given that a significant opportunity to rectify these foul-ups is available before legislation is adopted by the National Assembly;

Given that the origin of these foul-ups is mainly to be found in the preparatory design and implementation phases of the reform in question;

Given that it is in the interest of the National Assembly, the government and its administration that the rights and expectations of the public not be disrupted due to foul-ups in the application of legislation and that the impact of reforms on the public be as harmonious as possible;

Given that the preparatory design and implementation phases of reforms must conform to the principles of good management and good governance;

And given that *a posteriori* control by MNAs is not an effective means of preventing foul-ups arising from legislative initiatives from occurring in the first place;

I suggest:

1. that the MNAs, as lawmakers, be closely associated with the preparatory design and implementation phases of reforms in order to prevent foul-ups in their application;

2. that MNAs be able to intervene, in the public interest, during the period preceding the adoption of legislation;

3. that, to this end, MNAs be provided with the mechanisms and tools necessary to exercise a more complete and more functional supervision of the preparatory design and implementation phases of reforms;

4. that grids and memoranda be drawn up, according to needs, in order for MNAs to have an influence over decisions preparatory to the implementation of reforms on the administrative level, and to have more complete information concerning the possible application of reforms;

5. that these tools be designed so as to detect whether the principles of good management have been taken into account in decisions preparatory to the application of reforms;

6. that these tools be sufficiently complete and general to be able to be used in connection with all categories of reform;

7. that the government ask the parliamentary committees most closely concerned to examine the problem area or that these parliamentary committees take the initiative of adopting a specific mandate for themselves;

8. that, to this end, the parliamentary committees concerned join forces with the executive branch and the government administration to examine the problem area;

9. that the legislative, administrative and executive branches work toward this end in a spirit of partnership;

10. that parliamentary committees be allowed to consult ministers, senior civil servants, appointees of the National Assembly and the necessary specialists in order to carry out their mandate properly;

11. that, in order to carry out their mandate properly, the parliamentary committees concerned be given the opportunity to consult citizens, interested organizations, representatives and delegates regarding the optimization of reforms;

12. that a shift of these proportions be spread out over a period that is long enough to allow people to properly understand the outlines of the problem areas;

13. that in time, and with a view to preventing problems from arising, MNAs might also add these new *a priori* control methods to the more traditional *a posteriori* methods.

GOVERNMENT DEPARTMENTS

Ministère des Affaires municipales

The Québec Ombudsman in the municipal arena

The whole area of citizen's rights poses special difficulties where municipalities are concerned given the limited jurisdiction of the Québec Ombudsman. Indeed, although the Ombudsman can intervene with the ministère des Affaires municipales and the Municipal Commission, he cannot take direct action against municipal corporations.

Thus the Québec Ombudsman cannot take concrete action when it comes to this Department; his interventions are normally restricted to attempts to obtain more rapid and complete replies from the minister or from his representatives. He then conveys this information to the interested parties. In spite of the fact that, generally speaking, the Department's complaint processing office, given its limited means and powers, carries out its mandate in an appropriate manner, the vast majority of citizens are not satisfied with the results it has delivered.

After study, these complaints are usually dismissed since the minister has no coercive power over the municipalities. Thus the Department's interventions are restricted to claims for relief from the local government in question and, in exceptional cases, ultimately to obtaining from Cabinet an order-in-council demanding that the Municipal Commission conduct an investigation.

The Municipal Commission does have the power to conduct an investigation on its own initiative or at the request of the minister, but only concerning the financial administration of a given municipality. The Commission must receive a specific request from the government before it can investigate any other aspect of a municipal administration.

The situation inevitably results in a shortage of appropriate, rapid, effective and inexpensive alternatives for citizens wishing to see their rights respected and municipal statutes and regulations applied. Often citizens are forced to turn to the regular law courts as the only avenue open to them; however, this involves initiating long and costly judicial procedures against a municipal body that is well equipped to provide for its own defence.

The various municipal administrations are responsible for applying a significant number of regulations concerning construction, urban planning, libraries, recreational activities, transportation, road maintenance, sales, environmental nuisances, hygiene, animals, traffic, parking, fires, aquatic environments, floods, lighting, aqueducts, sewers, police forces, and waste management, as well as numerous other sectors.

Over the last few years, the government has given municipal administrations an increasing number of responsibilities previously been under provincial jurisdiction. For instance, it is incumbent upon municipalities to apply the *Décret sur la protection des rives, du littoral et des plaines inondables (order-in-council respecting coasts, shorelines and flood plains)*, as well as certain environmental norms stemming from the *Environmental Quality Act* and its regulations.

Of course, the government can, at least in theory, intervene in place of a municipality. However, its reluctance to act in areas of municipal jurisdiction is well known, since municipalities are regarded as having their own autonomous, elected governments. Thus, if a municipality does not fulfil its obligations, or is slow in doing so, there are very few means at a citizen's disposal, apart from turning to the courts, to see to it that his or her rights are respected.

Nevertheless, a negligent, heedless municipality which does not carry out the necessary measures may very well cause serious harm to the citizens living within its boundaries. Once again, as a general rule, the government will not usurp the role of the municipal authority, except in cases of fraud or widespread poor administration.

The same holds true for regional county municipalities, to which the government is delegating an ever-increasing number of responsibilities previously under provincial jurisdiction. This is the case for public lands, to cite only one example, where these regional county municipalities have been asked to apply norms in the area of coastal, shoreline and flood-plain protection, as well as regulations governing construction practices and waste-water treatment for isolated residences.

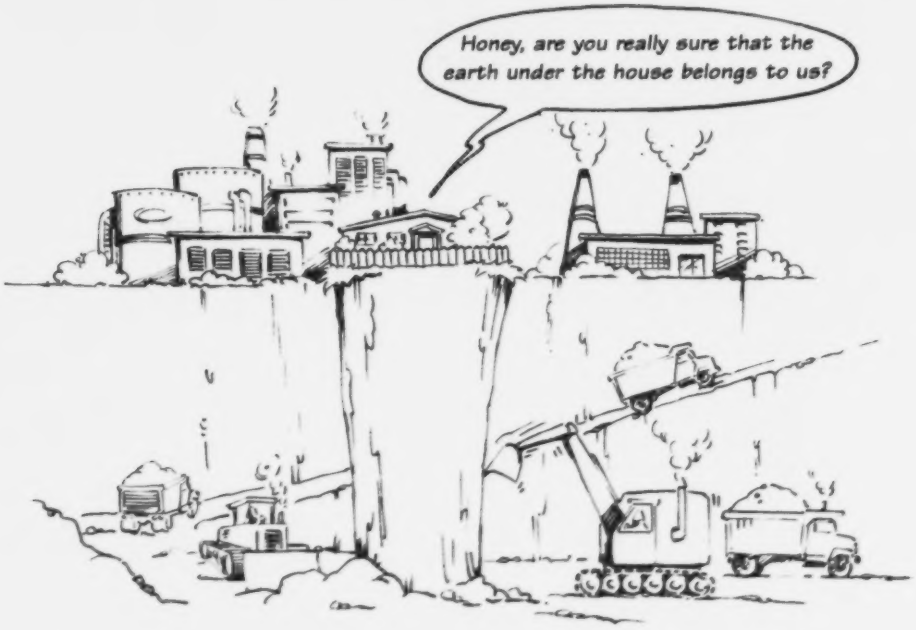
The following cases provide a good illustration of the abnormal and harmful situations in which citizens find themselves due to the actions – or inactions – of regional or municipal administrations. In spite of restrictions upon his field of jurisdiction, the Québec Ombudsman has provided support for citizens in a number of different ways and, in certain cases, a solution has been found by way of mediation.

The emptying of septic tanks or the rights of citizens

A company specializing in the emptying of septic tanks carried out its activities without respecting all the environmental restrictions imposed upon it. Since the company's activities were of a commercial nature, the Department, by way of its regional office, managed to solve a certain number of problems related to the company's actions. However, citizens were still subjected to certain inconveniences (regarding odours, noise and the parking of vehicles) which fall within the purview of municipal authorities. The municipality did nothing and its citizens remained powerless.

Living in an industrial park

A municipality expanded its industrial park. In order to do so, it dezoned a piece of land and purchased it. A residential building was located on this newly acquired land, but the municipality did not purchase the building itself. The owner of the building in question found himself in the middle of an industrial park, his quality of life suffered because of it, his environment was polluted, and his property value was dropping fast. The municipality had no intention of buying this property; what we have here, in actual fact, is a thinly disguised expropriation.



The usefulness of a waste-water treatment system

A citizen changed her septic tank but did not connect it to an absorption field and the waste water poured into a stream running alongside her neighbour's property, thus polluting both air and water. The municipality did nothing for months.

A flood zone forgotten by the regional county municipality

Two rivers overflowed, causing floods and damage to approximately twenty properties. The municipality had never informed a number of the riverside residents that they were living in a flood zone, and this area had never been labelled a flood zone in the regional county municipality's development plan. An expert proposed that certain work be undertaken in order to reduce the risk of flooding, and the minister gave his approval. The municipality promised to carry out this work, but later refused to do so, claiming to be short of funds. The work needed to be done quickly or else flooding would likely occur within the next few weeks.

When the regional county municipalities look after outfitting operations

A citizen was refused an outfitter's licence by the ministère de l'Environnement et de la Faune because his facility met neither provincial regulatory requirements nor those of the regional

county municipality. The facility is located on public land leased from the ministère des Ressources naturelles. The ministère de l'Environnement et de la Faune has certain requirements in accordance with the *Regulation respecting outfitters*, and the regional county municipality is responsible for applying its regulations governing construction practices, the treatment of waste water from isolated residences, and the protection of coastal shorelines and flood plains. A study of the case history reveals that the regional county municipality has proven to be negligent in the applying of its own regulations. The Québec Ombudsman's appeal to the ministère de l'Environnement et de la Faune has led the regional county municipality to assume its responsibilities.

When zoning and urban planning are of no importance

A municipality authorized a company exporting fruit and vegetables to the United States to set up shop on a vacant lot next door to a senior citizen who lived on the main street of the village. The elderly woman was inconvenienced by the noise and gasoline odours caused by the heavy vehicles that would arrive for loading. She had to live with these disruptions day and night, and even on weekends. The municipality did not even enforce its own noise pollution by-laws and ignored the repeated entreaties of the senior citizen, who had a great deal of difficulty withstanding these upheavals in her life, on both the physical and psychological levels.

Selling a street and hemming in a citizen's property

A city decided to sell a section of a street where three property owners resided. The city held an information session during which it sold sections of the street corresponding to the fronts of the buildings. One of the owners was unable to attend this meeting (he had been hospitalized), and the section corresponding to the front of his building was sold to his neighbour. The citizen's property was thus hemmed in, forcing him to obtain a right of passage from his neighbour.

The bicycle path and private property

A regional county municipality adopted a regulation to create a linear park on an abandoned railway line with the goal of establishing, in particular, a bicycle path and a skidoo trail for the winter. A group of approximately sixty property owners expressed their desire to see the park re-routed so that their homes would not be separated from the lake. (If created as planned, the park would have this obviously negative effect.) They were even prepared to assume the cost of re-routing and presented a project to this effect. The regional county municipality rejected their offer. The citizens enacted proceedings and the superior court ruled in their favour. The regional county municipality's regulation was invalidated since it did not create a park, but rather a traffic route, the latter falling under municipal, not regional county municipality, jurisdiction. The regional county municipality appealed the decision and lobbied the minister, with the help of the

Union des municipalités régionales de comtés du Québec. In the fall of 1998, the minister tabled a bill which would amend the municipal code in order to define a park. With this amendment, the regional county municipality would be able to carry out its project.

All these cases illustrate unacceptable situations. If the government has found that it is wise to establish policies and to legislate in the area of the environment, urban planning, shoreline protection, urban sprawl, etc., what possible benefit could the larger community derive from the fact that municipal and regional institutions do not fulfil the obligations with which they have been entrusted? Sometimes the problem arises from a shortage of funds; in certain cases the cause is inaction, pure and simple. We can only wonder about the others! To make a long story short, there are all sorts of reasons why such foul-ups might occur.

To sum up, the government delegates responsibilities to the regional and municipal administrations, and if they do not fulfil their obligations, it is the citizens who suffer, without their having recourse to any authority except the regular law courts. Although citizens are periodically able to replace their municipal representatives by way of the ballot box, this does not represent a viable solution since irreparable harm can be done in four years, and often in less.

Moreover, to give citizens the possibility of recourse which is appropriate, rapid and inexpensive, urgent action should be taken to broaden the jurisdiction of the Québec Ombudsman by creating the position of Deputy Ombudsman. This person could fully investigate complaints concerning local and regional administrations and intervene directly with them. Another appropriate measure would be to increase the powers of the Municipal Commission in certain areas.

It should be noted that, in Canada, a number of provincial ombudsmen have the right to intervene in areas of municipal jurisdiction. What is more, all across the world, governments or states which have created the position of Ombudsman have given their public protector jurisdiction over regional and local communities. If the Québec Ombudsman could intervene directly with the municipalities, citizens would finally have effective recourse, given his expertise in the public sector. A rigorous inventory of cases where municipalities have harmed their citizens, who are without recourse and left to their own devices, would demonstrate how important it is to review the current system, especially since the government has delegated new responsibilities to both municipalities and regional county municipalities, on the grounds that the latter are closer to the citizens and thus apt to serve them better.

Ministère de l'Agriculture, des Pêcheries et de l'Alimentation

A missing document and some room to manœuvre

It has been established by law that the ministère de l'Agriculture, des Pêcheries et de l'Alimentation may, under certain conditions, reimburse a farmer for part of his or her property taxes. An application for such a refund must be submitted before March 31 of each year.

Taking advantage of this right, a farmer duly sent in his application. However, on April 2, he noticed that he had enclosed last year's school tax statement instead of the current year's, an error which he immediately rectified by sending the right document to the office in charge. One month later, the Department informed him that the statement he had sent could not be accepted since it was received after the deadline. The farmer then contacted the Québec Ombudsman.

During his investigation, the latter became aware of a practice which had recently been adopted by the Department whereby a citizen was given a 45-day period to produce a missing document. The Québec Ombudsman thus pointed to this clause so that the farmer might benefit from a certain leeway. The Department finally agreed to provide a refund based on the second tax statement.

Reforestation and farming activities: the complaint was groundless but the procedure needed to be reviewed

In order to understand the next case, a few explanations are needed concerning operations affecting two partner departments.

Since 1987, an agreement has existed between the ministère de l'Agriculture, des Pêcheries et de l'Alimentation and the ministère des Ressources naturelles as concerns the planning of private-forest development initiatives in agricultural zones. The agreement was designed to ensure that government subsidies not lead to excessive reforestation which, in turn, might reduce the amount of land available for other types of agricultural activity. According to the agreement, a farmer may obtain a grant from the ministère des Ressources naturelles for purposes of reforestation if and only if the partner department has given its approval. The analysis of the latter department must therefore take into account the agricultural potential of the region and the necessity of consolidating neighbouring plots of land for purposes of expansion. A farmer's request may be passed on to the wood producers' union affiliated with the Union des producteurs agricoles (UPA).

In accordance with the terms of the agreement, a farmer asked the ministère de l'Agriculture, des Pêcheries et de l'Alimentation for official permission to initiate a reforestation project. The Department ruled against him so he then filed a complaint with the Québec Ombudsman for the following reason: the opinion of neighbouring property owners might well have influenced the decision. However, after investigating the claim, the Québec Ombudsman came to the conclusion

that the farmer's request, as well as four similar past requests, had been studied in conformance with the criteria established in the agreement. This complaint would not warrant redress.

On the other hand, the Québec Ombudsman noted a discrepancy between the explanations he received and the information provided by the documents studied for this case. Thus the Ombudsman decided to intervene given the apparent lack of procedural clarity. As a result of his observations, the Department agreed to review its method of assessment in order to make it more transparent and easier to understand. A more explicit form was also designed for recording the data from the investigation which motivated the administration's decision. Lastly, a more clearly defined procedure was adopted to be used in the future handling of cases which might lead to differences in opinion between agricultural producers, the UPA and the Department.

Ministère de l'Éducation

Confusion in pensions and an erroneous calculation

A student applied to the ministère de l'Éducation for student aid for the 1997-1998 year and in the process declared that she was receiving a disability pension of $7,000 per year. The administration in question therefore used 60% of this pension when calculating the student's contribution. At the end of 1997, she was informed that an error had been made in assessing the amount of the pension to be deducted: 100% of her disability pension should have been taken into account instead of 60%. The error had produced an overpayment and the student now had to reimburse the Department in the amount of $2,835. The student contested the decision and, at the review stage, she was told that the decision had been made in accordance with the regulations in force. She repeatedly appealed to the Department, which refused to review its position.

The student turned to the Québec Ombudsman, who concluded that the officials in charge had confused a disability pension with a retirement pension. In fact, the first percentage, namely 60%, was the correct percentage applicable to a disability pension. Thus the first calculation was the right one.

At the request of the Québec Ombudsman, the Department cancelled its claim and carried out the necessary research in order to track down similar cases. Five other students thus benefited from an adjustment enabling them to receive all the aid to which they were entitled.

Fictitious sponsorship and a breakdown in communication among departments

In this particular saga, an immigrant was granted permanent resident status with the possibility of receiving assistance from a close relative, an administrative category under the jurisdiction of the federal Department of Citizenship and Immigration. In actual fact, this person had not been sponsored financially by any assistant relative, even though, according to the federal form, his brother was living in this country. (Moreover, the newly arrived immigrant had actually moved in with his brother.) In 1996-1997, the immigrant in question applied to Québec's ministère de l'Éducation for student aid and was considered as an autonomous individual not receiving financial support from a guarantor by the administration evaluating his application.

The following year, this same student applied for student aid once again and the analyst evaluating his eligibility this time adopted an entirely different line of reasoning concerning his immigrant status; according to this analyst, the student indeed had a sponsor since his brother's name appeared on the federal immigration services form. The file was reviewed retroactively and the result was a $2,400 claim: it was deemed that in accordance with the *Immigration Act*, the student benefited from the financial support of his brother with whom he was living and that his living expenses were therefore considerably lessened. Hence the overpayment which he would have to reimburse.

The facts of the case did not in the least bear out this administrative interpretation, and the student attempted to have the claim cancelled since it was based on a factual error. He was assisted in these steps by the student aid officer at the school he was attending. In particular, he provided a letter from the Bureau des garants défaillants (under the authority of both the ministère des Relations avec les citoyens et de l'Immigration and the ministère de la Solidarité sociale) attesting that he had no sponsor in Québec. Astonishingly, this proof was not accepted since the letter came from a provincial department and not a federal authority. Finally, the student was forced to withdraw from school and turn to income security benefits for financial support. At this point, he lodged a complaint with the Québec Ombudsman.

A study of the documents at hand revealed that the student had provided the most official proof available to him in order to support his claims. From that point on, it was up to the administration to prove exactly how the student's assertions were inexact. The Québec Ombudsman thus intervened with the ministère de l'Éducation, stressing that the applicant's brother was not a sponsor as defined by law since he had not signed a sponsorship contract. The Department immediately cancelled the claim and declared the student eligible to receive student aid.

The Québec Ombudsman also suggested that a meeting be held involving representatives from the various federal and provincial departments in question (the ministère de l'Éducation, the ministère des Relations avec les citoyens, and the federal Department of Citizenship and Immigration); at this meeting, the requirements pertaining to each category of immigrant could be clarified.

Shortly thereafter, the meeting did indeed take place, and at the conclusion of the discussion, the Québec Ombudsman received a written confirmation from the ministère de l'Éducation specifying that henceforth certain immigrant students would be considered as being without sponsorship, in other words, as not receiving support from a guarantor.

Lastly, the Québec Ombudsman asked the Department to adjust the funding rules pertaining to a guarantor, an initiative which led the various offices in charge to track down cases for which similar decisions had been made. Nearly 40 such cases were unearthed for the 1998-1999 period, and new calculations were applied to these files for the purposes of allocating student aid.

Before making an administrative decision it might be worth looking at the documents

It does not happen often, but this time it was a university ombudsman who lodged a complaint with the Québec Ombudsman on behalf of a student who, in his view, was being treated unjustly by the ministère de l'Éducation.

The university ombudsman explained that the student had completed her collegial studies in British Columbia. However, once back in Québec, where she applied for student aid, her British

Columbia studies were considered as university-level studies and she was thus thought to have already benefited from student aid for the maximum number of semesters for which she was eligible. The consequence of this line of reasoning was that she was deemed ineligible to receive aid for 1998-1999. Both the university ombudsman and the student aid officer for the institution tried to rectify the situation, but to no avail.

In the course of his investigation, the Québec Ombudsman noted that the student had received only verbal explanations when informed of the decision and that no document had been offered as evidence up until that point. The ruling, which went against the student, was made without the relevant documents having been consulted. Thus, with the authorization of the young woman in question, the relevant documents were sent on to the ministère de l'Éducation. After analysis, the administration recognized that the British Columbia program indeed corresponded to a program of collegial studies. The qualifying periods were reassessed, and the student was awarded a bursary worth over $5,000.

School board reform and territorial division: do parents and students have any say in the matter?

Following the division of territory which took place in conjunction with the amalgamation of school board districts, two rural municipalities found themselves separated from their former school board district and attached to another board covering the regional county municipality to which they belong. This decision was made unbeknownst to the municipalities' residents who, via public consultation, had already voted in favour of maintaining their former school board. The decision led to students being forced to attend other schools, as well as to changes in school transportation policies.

With support from local and regional stakeholders, including the regional office of the ministère de l'Éducation, these people turned to the Department in order to request that the two rural municipalities be reunited, for practical and logical reasons, with their former school board. Provisions for the step taken by the citizens were established in the *Education Act* which authorizes the minister of education to reorganize school board districts, either at the request of the population groups in question or by his or her own initiative. In the case at hand, the minister refused to intervene while providing the interlocutors with no valid explanation whatsoever.

A second, similar complaint was made concerning another district. This time the procedure was initiated on several grounds: the relocating of students and the greater distance of the schools in question, the length of the trips imposed on the students, the necessity for school boards to reach agreements in order to maintain students in their schools, and the uncertainty surrounding the renewal of these agreements year after year.

During the summer of 1997, the citizen stakeholders appealed to public and administrative authorities on many occasions, but to no avail, for in August of the following year, an order-in-council confirmed the transfer in accordance with the new territorial division, much to the chagrin of both parents and students alike.

The two groups turned to the Québec Ombudsman for help.

After investigation, the latter came to the conclusion that the citizens' requests were reasonable and that the government had been inflexible in making the structure of municipal territorial organization its one and only priority and in setting aside the principles recognized in the *Education Act*; these include maintaining students in their immediate surroundings and ensuring that schools are located as close as possible to their homes. The Québec Ombudsman requested that the minister of education intervene with the government so that the order-in-council and the policy of relocating school boards might be amended to the citizens' satisfaction. The minister refused to take such action, citing the possibility of agreements being reached between the school boards themselves and the necessity of maintaining the status quo for the year during which the reform was being implemented. It was implied that the citizens in question could present their request in the following year.

Given the refusal of the Department, the deadlines determined by the amalgamation of the school districts, and the possibility of taking up the battle at a later date, the Québec Ombudsman invited the two groups to take action once again in 1999-2000. They did so at the beginning of 1999.

Not long after the request was once again presented, the Québec Ombudsman was told that the minister agreed to see the area in question reunited with its former school board once the two school boards in question expressed their opinions on the matter.

As for the first group, the minister rejected their request given the refusal of school board authorities to impose another transfer on the students.

Schools under scrutiny

A number of parents called upon the Québec Ombudsman to recommend that the ministère de l'Éducation close a public school which had opened recently, after having been granted an operating licence by the Department. Earlier, the Ombudsman had received a similar complaint concerning a private school with the same educational project. What in fact were these two institutions being reproached for?

In both cases, the parents were of the opinion that the Department had granted these schools a licence without ensuring that the various provisions of the *Education Act* would be respected before and after the issuing of the licence. According to these stakeholders:

- the education that the students were receiving in these institutions did not meet Department program standards;
- the teachers did not have all the necessary qualifications;
- the children coming from these schools were not equipped to join classes of the same level at other teaching establishments;
- the tuition fees were excessive and unjustified;
- the children had been the targets of certain acts of violence; these actions were tolerated in the name of the philosophy promoted within the school, a philosophy which the parents were strongly urged to support.

The investigation carried out by the Québec Ombudsman revealed that the parents were justified in their denunciations as concerns non-compliance with the *Education Act*. Interventions were made with the Department in order to find out what measures had already been taken or were being contemplated to ensure that the law was respected. In the case of the private school, the Department revealed that it had imposed several conditions when renewing the institution's licence. As concerns the new public school, following a public assembly involving the school administration and parents, and in accordance with an agreement signed with the school board,

the Department insisted that a number of corrective measures be implemented to bring the school in line with the law. The operating licence was issued for one year only.

Complaints linked to acts of violence and to certain controversial aspects of the actual educational project were the subject of discussions between the Québec Ombudsman and the ministère de l'Éducation. An investigation was carried out concerning the acts for which a teacher from the private school was being accused, and sanctions were eventually imposed. As for the contentious elements of the educational project itself, the Department deemed it preferable not to intervene in this area, entrusting those parents wishing to enrol their children in the school with the responsibility for exercising the necessary vigilance.

Delaying the repayment of student debts

With its legislative and regulatory amendments of May 1998, the government unilaterally amended three types of agreements which it had previously reached with students: those concerning the period during which an apprentice from a professional association is exempted from repaying his or her student loan, the interest rate for overpaid bursaries, and the obligation to assume interest costs during the exemption period, even if the contract signed with the financial institutions stipulates that no interest will be charged during this period. Twenty-one percent of all complaints received during the 1998-1999 period regarding student aid were directly related to these issues. The Québec Ombudsman requested that the minister re-establish agreements already signed (setting interest rates at 5% for overpaid bursaries), as well as those including pre-determined exemption periods signed with apprentices. Since this recommendation was not followed and no valid reason provided, the Québec Ombudsman intends to pursue the procedure already initiated.

Moreover, a request for class action was addressed to the Québec Court by a student concerning the accumulation of interest during the exemption period. On June 10, 1999, the court authorized him to institute these proceedings. The Québec Ombudsman is closely monitoring the unfolding of this case.

Withholding money unjustly

When students default on their loan repayments, both the loan capital and interest become subject to immediate repayment (section 66 of the *Regulation respecting financial assistance for students*). The ministère de l'Éducation may then withhold its claim from any sums of money the student might receive from an income tax refund (section 31 of the *Act respecting the Ministère du Revenu*).

Based on these stipulations, in August 1998, Aide financière aux études or AFE (the agency dealing with financial assistance for students) sent information by magnetic tape to the ministère

du Revenue indicating that the Department should withhold sums equalling debts owed to the ministère de l'Éducation. The AFE administration forwarded the wrong magnetic tape, sending the accounts created rather than the delinquent ones. Thus over 1,000 of the 20,000 deductions actually made were, in fact, unjustified. The Québec Ombudsman therefore requested that the Department track down all the cases in question and repay the wronged parties without further delay. All reimbursements were made within a month.

Becoming better informed means making better decisions

For several years, out of a concern with offering its clientele quality service, the AFE has invited all student aid officers to send in comments as a means of improving application forms for student aid. The Québec Ombudsman took advantage of the opportunity to offer his own suggestions.

Thus on the 1997-1998 form, a special box was added at the request of the Ombudsman in order to more quickly identify students who have just come off income security, so that they might receive student aid within a period of two weeks.

In 1998-1999, following an intervention by the Québec Ombudsman, the AFE added another specific box on pre-identified requests for aid, as a means of learning about the activities of the student during the winter preceding his or her application for aid. As it now stands, if a student was at school during the winter preceding the filing of an application, 60% of his or her income is taken into account. On the other hand, if this student was working, only 2/3 of the 60% of his or her employment income is taken into account. If no information is available concerning the aforementioned activities, an excessively high contribution may very well be demanded.

For the 1999-2000 fiscal year, the Québec Ombudsman has succeeded in having a box added in which to provide a clearer identification of those receiving assistance from the *Fonds de lutte contre la pauvreté* because for these recipients tuition fees are not refunded by the AFE but rather by the ministère de l'Emploi et de la Solidarité sociale. Since no provision had been made on these forms for identifying this clientele (the authorities were counting on the vigilance of student aid officers who were supposed to indicate such recipients to the AFE), overly generous bursary disbursements were likely to be made if such fees were erroneously credited to them.

For the 2000-20001 fiscal year, the AFE has promised to specify, in its user's guide for student aid applications, that a student must repay 50% of a delinquent loan before once again becoming eligible to receive student aid. This information is essential since it allows a person in this situation to decide whether or not it is actually feasible to return to school.

The definition of a Québec resident

In the fall of 1997, the government implemented its policy involving the raising of tuition fees for those not recognized as "residents of Québec". On April 8, 1998, the ministère de l'Éducation published two draft *Regulations respecting the definition of resident in Québec* for the purposes of the *Private Education Act* and the *General and Vocational Colleges Act* in the *Gazette officielle du Québec*. The Department also prepared a guide for implementing its policy concerning tuition fees for Québec's universities. In this guide, the relevant provisions of the regulations are taken up once again and the documents that are required to establish a student's Québec residence status are specified.

The Québec Ombudsman submitted comments to the minister of education concerning the notion of "Québec resident", a concept which had been the subject of many past complaints. The Ombudsman brought up the fact that the draft regulations created unjustified distinctions between an individual who was born in Québec (who permanently maintains the status of Québec resident) and an immigrant who has subsequently become a Canadian citizen (who loses the status upon leaving Québec).

The Québec Ombudsman also made it clear that the draft regulations imposed a link of dependency upon immigrants who had arrived in Québec a number of years earlier with their parents, and who were now adults with family responsibilities. In fact, it was pointed out that should these citizens leave Québec, their status as Québec residents would be maintained only if their parents, spouse or guarantor chose to remain in the province. The Québec Ombudsman stressed the fact that these rules served to maintain a link of dependency with a third party in situations where, in reality, such a link simply did not exist.

What is more, the Québec Ombudsman disagreed with the Department's decision not to extend Québec resident status to students from other provinces who are enrolled in a paid, full-time work term program as part of a program of studies. In fact, such students are considered Québec residents for other government programs, and their income is taxable under the terms of the *Taxation Act*. The Québec Ombudsman expressed the view that these students, who pay for their training out of their own pockets and contribute, by way of their taxes, to Québec's social programs, should not be penalized.

The Ombudsman also requested a review of the absolute character of the Department regulation stipulating that a student from another province would acquire Québec resident status if, and only if, he or she withdrew from all full-time studies programs for a period of twelve consecutive months. In his opinion, this stipulation served no purpose whatsoever in terms of assessing whether or not a student wished to settle in Québec. A proposal was made to add a criterion concerning the length of residency in Québec for full-time students. Lastly, the Québec Ombudsman recommended that the Department standardize all definitions of Québec resident in

its various regulations in order to promote consistency in the applying of regulations governing relations between students, teaching establishments and the Department.

As a result of these comments, the ministère de l'Éducation established an inter-level committee (involving the elementary, secondary, collegial and university levels) entrusted with analyzing the cases submitted and with proposing amendments to the various regulations governing Québec resident status. The Department proposed four draft regulations concerning the definition of a Québec resident to be added to the *General and Vocational Colleges Act*, the *Private Education Act*, the *Education Act* and the *Regulations respecting financial assistance for students*.

The minister granted immigrants selected by Québec the same rights as people born in Québec. He also officially granted the privilege of retaining Québec resident status to immigrants living in Québec for three consecutive years in the course of the last five. The Department did however maintain the link of dependency as regards third parties. The Québec Ombudsman intends to pursue his discussions with the Department.

School day-care services

Since September 1998, the newly established school councils, with the support of the school boards, have had to establish school day-care services whenever requested to do so by parents. A program involving reduced contributions for certain day-care spaces was initiated at the same time and was combined with the first. Linkage of these programs was carried out at the end of the summer of 1998, and, as it turned out, certain schools and school boards were not equipped to handle the demand at the beginning of the school year. A group of citizens complained to the Québec Ombudsman following their school administration's refusal to offer day-care services.

The complaints that were accepted as valid concerned day-care services offered when kindergarten students gradually began to attend classes. When full-time kindergarten was first introduced in the autumn of 1997, the Department left open the possibility for school boards to integrate kindergarten students into their day-care system, on a part-time basis and for a restricted period of time. In 1998-1999, a certain number of school boards were once again offered this possibility, including a few schools from a certain specific school board which had initiated a gradual introduction-to-school procedure extending over a period of two weeks.

The decision to open the day-care service during this two-week period should have been made at the end of the first day of class, on August 28, 1998, during a meeting between parents and the school administrations. Before this meeting, parents were informed by their respective school administrations that the day-care service would be available during the inaugural two weeks only if demand was deemed to be sufficient. The school administration claimed that it was not obliged to open the day-care service during this period, since the self-financing policy of the school-board service had not yet been reconsidered in light of all the recent changes.

The parents then contacted the person in charge of day-care services for their school board. The board refused to intervene with the administration on their behalf since the school and the school council are ultimately responsible for organizing and managing day-care services. The school board suggested instead that the applicants again turn to the school administration and invite it to identify day-care needs more precisely before the beginning of the back-to-school period. This suggestion left the parents at a dead end, given that the first meeting of the school council was scheduled one month after the start of regular day-care services.

The Québec Ombudsman's investigation established that the school board, as interim trustee for the school council, is required to offer day-care services at the parents' request. Ministerial directives and intentions are very clear in this regard, and the necessary funding is also available. Thus a school board cannot refuse to offer this service during the gradual introduction-to-school period if parents so request it, especially since the "gradual introduction" system represents an exception and should only be implemented with the support of the majority of parents, a procedure which seemed not to be followed in the aforementioned situations.

When we intervened with Department authorities, we were told that a number of information meetings with those in charge of the files at the school boards were still pending, that it was not possible to finish this series of meetings before classes began, and that there were a number of grey areas left to clarify with several school boards. The Department was also contemplating various methods for sending out the necessary information. We managed to convince the Department to intervene directly with the school board so that its intentions and policies might be clarified before the beginning of classes. The school authorities finally offered the desired day-care services.

Ministère de l'Emploi et de la Solidarité[9]

[9] Now called the ministère de la Solidarité sociale, this new designation replacing the above-mentioned title.

People who just don't qualify for any assistance program whatsoever

In this particular case, students attending a non-subsidized collegial institution had already reached the $25,000 debt ceiling established by the ministère de l'Éducation. Thus they were no longer eligible for the Department's financial assistance plan. Nor did they have a right to income security benefits since they were enrolled full-time at a collegial institution and were not participating in any measures approved by the Department. Moreover, in the eyes of Emploi-Québec, the students belonged to the category of individuals who could not benefit from income support measures since they were receiving neither income security nor employment insurance benefits. Without any means of support, corresponding to no profile which would make them eligible for public assistance programs, but determined to get their diplomas, these students appealed to the Québec Ombudsman for help.

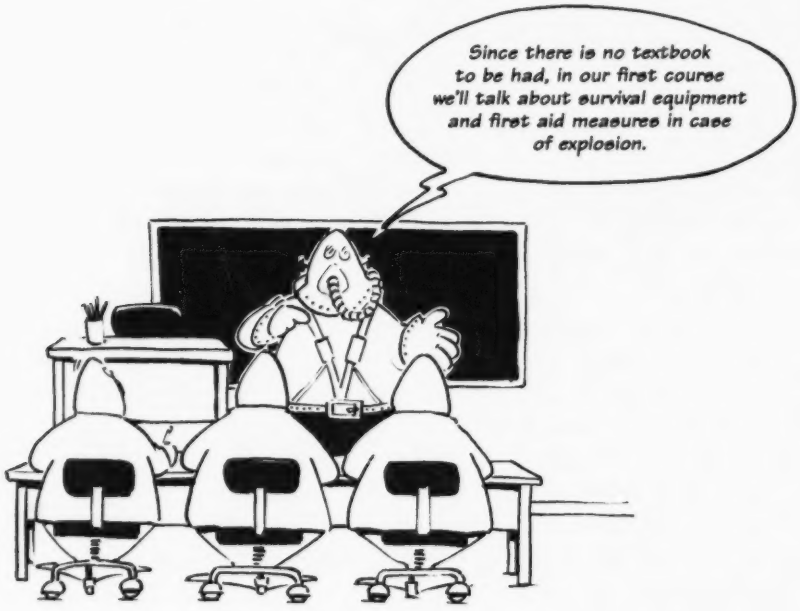
The Québec's Ombudsman initiated discussions with local employment centres, the concerned regional offices, and the Bureau de renseignements et plaintes (information and complaints bureau) of the Department. A viable solution was soon discovered: before April 1, 1998, the ministère de l'Emploi et de la Solidarité could, under certain conditions, provide last resort assistance if students normally ineligible for student aid were completing their final semester of training. Using this approach as a model, and in spite of certain legal restrictions, the minister agreed to grant the students last-resort assistance so that they would not find themselves totally destitute and in order that they might complete their studies.

Combustion gas: having access to information means passing the exam

A citizen who is the owner of a company specializing in the installation of gas burning appliances (furnaces, restaurant equipment, etc.) was facing a seemingly unsolvable problem: his apprentices regularly failed the examination given by the ministère de l'Emploi et de la Solidarité and were thus unable to obtain their certificate of qualification.

Turning to the Québec Ombudsman, this citizen pointed out that in the past those taking the examination were allowed to consult a specific learning manual in order to answer the questions. This volume, which is over 200 pages long, contains the measures and norms to be respected when using heating and cooking appliances. After having perused the volume in question, the Québec Ombudsman concluded that it was indeed practically impossible to pass the exam without referring to the manual.

During the investigation, the Ombudsman conferred with the teacher in charge of training apprentices. Aware of the high failure rate, the latter confirmed that the manual was indeed necessary, since very few students were able to memorize the vast amount of technical data needed to pass the test.



For his part, the person in charge of the program at the Department informed the Québec Ombudsman that the book was expensive, and for this reason, his offices no longer provided it. On the other hand, certain pages were distributed to the students, and this documentation was meant to help them answer the questions. After checking with certain students, and with the contractor who filed the complaint, the Québec Ombudsman concluded that the Department had been providing the wrong pages of the manual. What is more, through contacts with professional circles it was learned that a number of contractors appeared ready to pay for the manuals in question since these volumes are consulted on a daily basis as a means of ensuring the safety of installations.

Given the hesitations of the individual in charge of the program, the Québec Ombudsman spoke with this person's immediate superior, suggesting that Department policy be reconsidered and that the examinations of those who failed be reviewed.

A short time later, students were authorized to consult the book once again. Both the person in charge of the program and the contractor who had appealed to the Québec Ombudsman have informed the latter that the pass rate has now improved, that students have successfully retaken the examination, and that some of them, after their exams were reviewed, have obtained their certificate of competency.

Refusal and silence: the horror of no longer hearing and of no longer being heard

An income security recipient has a son who is both deaf and afflicted with a serious mental illness. One evening, her son was loitering in a park, and law enforcement officers asked him to leave the premises. The young man refused to comply, and an altercation ensued during which he lost his hearing aid. Once freed, he tried in vain to find the lost device. Without his hearing aid, he could hear practically nothing.

Without the financial means to purchase another hearing aid, the boy's mother appealed to the Régie de l'assurance-maladie du Québec (Quebec's health insurance board) in an effort to obtain a new one. The board refused to replace the lost device. She then contacted her son's caseworker from the ministère de l'Emploi et de la Solidarité. Could this person intervene on her behalf? The caseworker tried to draw upon the Department's emergency fund made available to regional offices for needs not stipulated in the *Regulation respecting Income Security*. The request was turned down, and the citizen also returned empty handed from her local CLSC (local community service centre) and from a variety of community groups to which she had also addressed an appeal for help. Without his hearing aid, her son was no longer able to continue with the therapy his condition required; his psychiatrist provided a medical certificate attesting to this significant side effect. The mother called upon the Québec Ombudsman for help.

In his investigation, the Ombudsman first turned to the Régie de l'assurance-maladie, but the board simply reiterated its decision. Finally, given the critical situation in which the family found itself, the ministère de l'Emploi et de la Solidarité agreed to review the case and asked its regional office to reimburse at least half the cost of the hearing aid.

A helping hand for job seekers and clear instructions too

In June 1998, the minister announced a new measure entitled "Supplément de retour au travail" (return-to-work supplement), which was designed to provide financial support for income security recipients who were returning to the job market: they would receive $500 with which to pay transportation costs, purchase new clothing or defray any other expenses linked to their employment. In order to take advantage of this offer, applicants had to

- be receiving income security benefits for at least three months;
- apply within 30 days of the date on which they began their new job; and
- provide proof that they were earning a gross monthly salary of at least $740.

In the case at hand, an income security recipient was offered a permanent position by an employer and was slated to begin work on the 26th of the month. The very next day, he informed his case worker that, given his salary, he was no longer eligible to receive benefits. On the 27th of the following month, the case worker contacted him to confirm that he was indeed no longer eligible

to receive income security benefits but that he could have taken advantage of the special $500 benefit, had it not been for a slight delay. In fact, he was disqualified under the thirty-day rule: he had started his new job on the 26th of the preceding month, so he missed out by one day. Judging this stance to be unjust, the man complained to the Québec Ombudsman.

The investigation revealed that the beneficiary had advised the local employment centre of his return to work within the 30-day period and had also forwarded all the documents required by his case worker. Consequently, he had followed all the instructions, and his right to these benefits was therefore maintained. Following the Ombudsman's intervention with the Department, the citizen was able to receive the supplement. What is more, the administration altered its information pamphlet in order to place more emphasis on the 30-day period from the beginning of the job, the bottom-line condition for receiving the special benefit.

Emploi-Québec: a false start

Following the signing of the Québec – Canada agreement and the creation of the ministère de l'Emploi et de la Solidarité in April 1997, the government announced that it was putting an end to years of dispersed initiatives arising from the multiplicity of players and programs in the area of workforce development and training. "Never before has Québec had so many tools at its disposal with which to develop its workforce in an effective manner," trumpeted a press release issued in May 1997 by the office of the minister of state for employment and solidarity.

On April 1, 1998, the public employment services previously offered various client groups (by the Centres Travail-Québec, the Société québécoise de développement de la main-d'œuvre, and Human Resources Development Canada) were merged into one single network: Emploi-Québec. The Emploi-Québec network encompassed 260 service outlets, that is, 130 Travail-Québec

centres, 52 outlets representing the Société québécoise de développement de la main-d'œuvre and 78 Human Resources Development Canada service points. Members of their personnel were gradually integrated into the Emploi-Québec network.

At first, only sixty or so complaints were addressed to the Québec Ombudsman since Emploi-Québec's clients were at that time receiving solid financial support. Complaints generally came from citizens deemed ineligible for programs because they did not meet the pre-established criteria. A few months after its creation, however, Emploi-Québec began to experience more than its share of difficulties.

In a study conducted in January 1999, analysts from the Direction de la recherche, de l'évaluation et de la statistique (research, evaluation and statistics division) of the newly established ministère de la Solidarité sociale pointed out a great many problems faced by Emploi-Québec's agents and managers:

- Problems with its overall vision regarding how to supply, allocate and organize services.
- Delays in or an absence of planning, vague orientations, a multitude of intervenors, poorly defined responsibilities for the various intervenors, and unrealistic deadlines.
- An absence of reliable data concerning financial transactions and results.
- Incomplete training of personnel as concerns how to apply certain measures, such as personalized income support; an absence of clear guidelines and of software to be used in establishing the amounts that clients should receive from agents.
- Problems of overlap between Emploi-Québec services and certain outside resources offering employment- and training-assistance services.
- A computer system which does not meet needs, leading to difficulties of access for agents.
- An absence of budgetary controls: overspending estimated at $80 million.

This state of affairs explains the crisis experienced by the network of local employment centres since the launching of Emploi-Québec.

The report reached the desk of the Québec Ombudsman in March 1999. Since the situation had already reached the critical stage, the Ombudsman asked the Department to report upon the funds available to Emploi-Québec and the measures it had taken to respect all commitments to its clientele. The authorities informed us that they were able to meet their obligations in spite of budgetary constraints.

The truth of the matter was, of course, very different, as everyone has realized since: strapped for cash, Emploi-Québec was unable to respect agreements it had signed with citizens who had been promised financial assistance in order to begin or continue training programs.

The Québec Ombudsman intervened on their behalf with Emploi-Québec authorities, requesting that the contracts signed by citizens be respected, in spite of the agency's overspending. In fact, even granting that Emploi-Québec had experienced a difficult year of transition, citizens had nonetheless, in good faith, followed the directives of agents, taken certain steps, and made commitments in an effort to improve their employment prospects. They should not be the ones to pay the price for a poorly planned set of reforms.

Recent new funding provided by the minister made it possible to adjust not only the cases of citizens who called upon our services but also those of approximately 6,800 beneficiaries confronted with the same sorts of difficulties. Incidentally, this new money has not solved all the problems. Many community organizations, caught in the trap of budget cutbacks, have been deprived of salary subsidies and have thus been forced to reduce or suspend their activities. This has deprived a number of citizens of services such as home-care services. The government will have to find the necessary funds to ensure that the services offered to our most impoverished citizens by these organizations are maintained and in the future will have to find ways to make the funding of these organizations less uncertain. In an article published in January 1999, Mr. Michel Noël de Tilly, Secretary-General at the ministère du Conseil exécutif, offered management the following reminder:

The development and consolidation of the social economy sector are very important for the future of Québec. Changes in the culture and practices of government departments and organizations should accompany this new approach to economics.

The methods used by Emploi-Québec to resolve its financial crisis do not in any way reflect this new approach and put into question the government's commitment, made at the October 1996 Summit on the Economy and Employment, to provide ongoing support for organizations working in Québec's economic sector.

The Québec Ombudsman intends to produce a special report on the case of Emploi-Québec.

Ministère de l'Environnement et de la Faune[10]

[10] The ministère de l'Environnement et de la Faune has been replaced by the Société Faune et Parcs du Québec (FAPAQ) and by the ministère de l'Environnement du Québec (MEQ). The FAPAQ was created by the Québec National Assembly on June 18, 1999.

Falsification of documents

A group of 25 trappers contacted the Québec Ombudsman and informed him of an illegal act committed by an employee of the ministère de l'Environnement et de la Faune. The complaint concerned the lease-granting procedure for trapping on public land, and the trappers had already tried twice, in vain, to have Department authorities ensure that the applicable regulation was being respected.

It should be noted that the regulation stipulates that a trapper may transfer his or her rights to an assistant if the latter has set down traps on the territory designated in the lease during the course of the three (3) years preceding the transfer. This time period is reduced to one (1) year in the case of the death of the lessor.

As concerns the case at hand, an employee of the Department had already authorized a bending of the rules, as well as the producing of false documentation, thus allowing the son of a deceased trapper to be granted a trapping area even though he had not been assisting his father for the past five (5) years. According to the regulation, the trapping area in question should have been allocated on the basis of a lucky draw. This injustice, along with the way the group was treated by the administration, formed the basis of the complaint.

According to the Québec Ombudsman, what matters is that the regulation be respected and that the trapping area be granted by means of a lucky draw. Soon after his intervention, the Department applied the regulation and informed those involved of the revised procedure.

Hunting and big game: budget cuts dictate which practices to abolish

The facts were first denounced by a private citizen and by hunting and fishing columnists and were subsequently confirmed in the course of an investigation carried out by the Québec Ombudsman in 1997 and 1998. At that time, an MEF practice of ten years' standing was being called into question. According to this practice, a network of proxies were authorized to carry out the mandatory registering of big-game catches, a procedure established in accordance with hunting regulations.

Originally, proxies were paid by the Department, but budget cuts resulted in an entirely different procedure: as of 1996, these individuals were authorized to levy fees directly from the hunters, without this procedure ever having been established by law. The irregularity was first raised by the Québec Ombudsman who urged the Department to provide the required legal framework for such a practice. The administration agreed to implement this recommendation.

Another aspect of the same case: the Québec Ombudsman recommended that the Department reimburse the hunters in question for the fees that they had been charged illegally since the 1996-1997 season. After analyzing their claim, the Department refused to comply, invoking the high

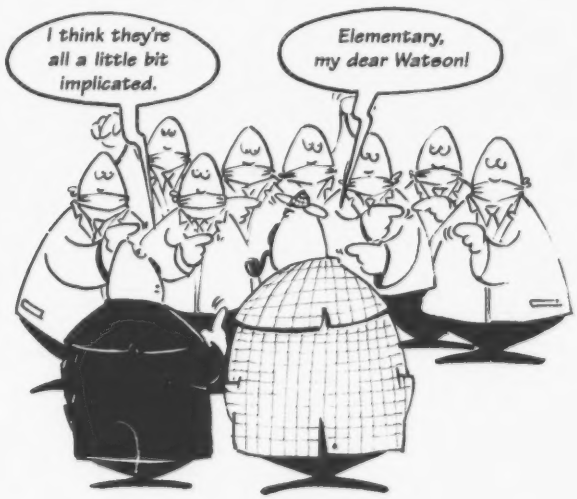
cost of such an operation (nearly $3 million), whereas the hunters had to spend a mere $5 each when they registered. The Department proposed instead that the hunters be exempted from paying these fees for the 1998-1999 season. Because of delays in implementing this measure, the exemption was, however, postponed until the 1999-2000 season.

Although he would have liked to see free registration for big game hunting maintained for a period of two years, the Québec Ombudsman, given the circumstances and the talks that had already taken place with civil servants from the Department, declared that he was satisfied with the measure put forward by the Department and implemented on August 26, 1999.

Top secret: information hidden from the Québec Ombudsman

In a development related to the case just described (hunting and big game), a journalist informed the Québec Ombudsman that she had managed to lay her hands on a message written in December 1997 and signed by a senior civil servant from the MEF. The subject of the note was more than a little surprising: it was intended for all heads of the Service de la conservation et de la faune and recommended that the Québec Ombudsman be kept from having access to or even hearing about a note from the deputy minister concerning the aforementioned lack of any legislative framework with which to regulate the role and powers of proxies.

In the eyes of the Québec Ombudsman, this constituted a flagrant concealing of information. In order to shed some light on the events, he appointed a retired judge, without any link to the institution, to carry out an investigation and identify those responsible.



From the testimony received and the documents studied, the investigating judge was able to attribute serious breaches of duty, procedural irregularities, and acts contravening both the law and established administrative practices to a number of civil servants, including certain highly placed government officials. The judge concluded that keeping the note in question from the Québec Ombudsman directly thwarted him as he tried to carry out his mandate. Moreover, far from being an isolated gesture, this represented an attitude which was sanctioned by various individuals occupying important positions in the Department hierarchy. Lastly, the investigation confirmed, in a more general sense, the existence of administrative deficiencies and pointed to a misunderstanding of the role and powers of the Québec Ombudsman.

The Québec Ombudsman received the report on the investigation at the beginning of 1999 and he recommended that disciplinary action be taken against those responsible. He also stressed the importance of training personnel to better understand the institution embodied by the Québec Ombudsman and to respect his right of access to any document which might prove useful in his research.

Thanks to the intervention and recommendations of the Québec Ombudsman in this particular case, the guilty parties were duly reprimanded and their superiors were informed of the situation. In letters sent to them individually, the conduct of these government employees was criticized and they were reminded of the sense of responsibility and the attitude of ongoing collaboration that everyone should develop with regard to the Québec Ombudsman and his representatives. What is more, the Department took it upon itself to organize workshops for its employees concerning the powers of the Québec Ombudsman and a civil servant's duties in respect thereof.

The senior authorities of the Department are responsible to the National Assembly for the management methods of their administration. This is why the Québec Ombudsman brought the situation to the attention of the chair and vice-chair of the Committee on Public Administration. The file was formally referred to the committee for study. As well, the office of the Québec Ombudsman intends to request that its own act be amended in order to establish criminal sanctions for any government employee who knowingly hides information from the Québec Ombudsman.

Taking the luck out of the lucky draw

The MEQ (formerly the MEF) is in charge of managing the lucky draw for trapping areas. A trapper's certificate is not required in order to participate in the contest; however, it is required when signing a lease for a trapping area. It should also be specified that the priority list for allocating these areas is established by the Société des établissements de plein air du Québec.

The Société thus made up its list for 1998 according to its usual practice, with names appearing by order of priority. The entire procedure took place between June 1 and June 18, and the list

was then immediately forwarded to the Department, which in turn proceeded to the next step, namely offering the areas to candidates, according to the order of priority, for each of the regions where trapping areas were available. The territory in question here included four available trapping areas.

From June 18 to September 14, the Department managed to allocate only two areas and to contact five candidates. At the end of this period, that is, a month before the opening of the trapping season, there were areas that had not yet been allocated, and no trapping courses had been offered since the end of August of the previous year.

The case at hand began when an individual contacted the Québec Ombudsman and informed him that the Department had skipped over her name on the list and, without informing her of its decision, had contacted the very next candidate. What actually happened here?

The investigation revealed that, as a time-saving measure, the Department checked whether the complainant had a trapping certificate or was enrolled in a course so as to obtain one. Since neither was the case, the Department did not even consider her candidacy and simply went on to the next name, without so much as contacting the complainant in order to explain this procedure.

At the time she was offered the desired trapping area, it had already proven impossible for the complainant to enrol in a course leading to a trapping certificate since no such course had been offered before the opening of the season.

The investigation also showed that there were serious flaws in the management of the land distribution process and that there was an urgent need to rectify the situation. The Department took note of the deficiencies highlighted by the investigation and promised to review the operating procedures in question. Also, in 1999, recipients have had to accept or reject the trapping area offered to them within fifteen days; otherwise the Department has been offering it to the next person on the priority list. The Department is contemplating other corrective measures and improvements to the procedure. We should all stay tuned.

However, the specific case of the person who contacted the Québec Ombudsman has not yet been resolved to the complainant's satisfaction. In fact, the Department at first merely offered her an inadequate form of monetary compensation. Due to poor management of the land distribution process, the citizen in question was severely inconvenienced: for the previous nine years, it was not possible for her to enjoy exclusive access to a trapping area with an annual renewable lease.

White-tailed deer: patience and a pilot project

In his 1997-1998 annual report, the Québec Ombudsman noted that the ministère de l'Environnement et de la Faune (MEF) was reluctant to authorize the raising of white-tailed deer as a first step toward the marketing of venison. The administration's attitude created serious problems for a number of big-game breeders, whose operations were all the while being subsidized by the federal government, with technical assistance from the ministère de l'Agriculture, des Pêcheries et de l'Alimentation.

Following a number of complaints, the Québec Ombudsman urged the authorities in question to coordinate their actions in this particular area. After a series of long delays, a pilot project was announced in 1996, and was finally approved by the minister. Subsequently, the requisite regulatory amendments – long-awaited by breeders – were adopted by the government and came into effect in April 1999.

Losing one's hunting or fishing licence, or having it fall apart, means no longer being entitled to hunt or fish

By purchasing a hunting or fishing licence, citizens consider that they have paid to acquire a right. Losing the document (or having it fall apart) does not lead to being deprived of this right, but it does mean that the licence holder has lost any proof of having paid the requisite fee. Since the Department needs a quick way to verify that payment has indeed been made, any citizen without a licence (thus contravening established regulations) must acquire a new one if he or she wishes to continue hunting or fishing without committing an offence during the lengthy period before the Department tracks down the proof of payment.

The Québec Ombudsman's investigation revealed that the system in place was very archaic indeed, and that, given its obvious deficiencies, the Department was neither able to verify proof of payment rapidly nor to issue a duplicate licence. This system did, however, have one important virtue: it kept the cost of a licence very low, thus keeping the cost of Québec licences competitive with those issued in the rest of Canada.

At the point when the Québec Ombudsman intervened, the Department was already trying to find a more effective system of management, a system capable of issuing duplicates without undue difficulty, while keeping the cost of the licence as low as possible. Thus the Department was faced with a real challenge.

After several fruitless attempts, the Department discovered a system which could meet all these requirements. In the future, its service outlets will be fitted with modern equipment, duplicate licences will be available for approximately two dollars each and the cost of a licence will stay the same, thus remaining competitive. Lastly, as well as being a better tool for wildlife

management and for meeting the needs of hunters and fishers, the system will also allow the Department to quickly garner the receipts generated by licence sales. This new system will probably be tested during the issuing of fishing licences in April 2000, or of hunting licences the following September. It will be extended to include the whole of Québec in 2001.

Ministère de la Famille et de l'Enfance

The ineligibility of the children of home childcare workers for the financial support programs of the ministère de la Famille et de l'Enfance

Approximately 20% of the complaints received during the 1998-1999 fiscal year denounced the terms of section 39 of *An Act respecting childcare centres and childcare services*. Under this section, whenever the children of home childcare providers, or of their assistants, were placed in a home childcare facility, they were deemed ineligible for any of the Department's financial support programs for parents. In accordance with section 39, these two groups of parents who work in home childcare facilities were, most notably, not entitled to low-cost, otherwise known as "$5-a-day", childcare. On the other hand, they were entitled to financial support when their children were enrolled in a day care centre, that is, a facility or a home specifically used and fully equipped for this purpose.

The citizens in question cited the unjust and discriminatory character of such a measure. They turned to a number of interlocutors and organizations, such as the Commission des droits de la personne et des droits de la jeunesse, as well as to the Québec Ombudsman, in an effort to have the Act substantially amended.

A few examples of individual complaints, illustrating the wide range of problems that we have had to deal with as part of a group file, are provided below:

A citizen in charge of a home childcare facility had a three-year-old daughter. She had always kept her daughter with her, but at a certain point she wanted the child to experience another type of childcare setting so that she might feel more at ease with adults and become more autonomous before she began school. Thus she enrolled her at another home childcare facility in February 1998, for three days per week at a cost of $19.50 per day. However, the childcare worker at the latter establishment informed her that she was unable to look after the child since the little girl would be taking a space stipulated under the terms of her licence as belonging to the "low-cost" category. Since her daughter was not entitled to these services at the lower rate, the mother had no choice but to look for another childcare service. What is more, if any other space became available, her daughter would have to be enrolled immediately, whereas the mother had only intended to send her to a childcare centre as of September 1998. (This extended stay would, of course, entail an added expenditure.) Although she brought the issue to the attention of the ministère de la Famille et de l'Enfance, the agent consulted there could do no more than refer the mother to a regular day care centre which might have some spaces available. The mother thus contacted the Québec Ombudsman, for she found the situation unjust and contested both the aforementioned constraints and the extra costs imposed upon her.

Another home childcare provider complained that she had to include her own child in her ratio of children to be cared for, without receiving any extra funding, thus incurring a significant financial loss. Her daughter was enrolled in a regular day care during lunch hour and for two hours after school. The home childcare provider felt that she should be entitled to enrol her

daughter in her own facility without having to forfeit the subsidy; after all, the little girl was eligible for a low-cost space in the school system. The mother denounced this situation, which she found unjust given that high-income parents were entitled to "$5-a-day" day care, and yet she was denied this privilege simply because she ran a home childcare facility. As a point of comparison, she pointed out the fact that a doctor who provides medical care for his or her family members is entitled to be paid for such professional services.

In yet another case, a single mother with two dependent children (who were enrolled in a home childcare facility five days per week) was granted a low-cost space for her four-year-old child and, as part of a financial exemption program, received $16 per day in financial assistance for her youngest child. The home childcare provider at her children's facility offered to hire her as a full-time assistant, which would guarantee the single mother a degree of financial autonomy. However, if she accepted the position, she would be forced to give up the financial assistance and the "$5-a-day" space, since those assisting the head homecare provider, namely employees of the person having obtained official recognition for the homecare facility, were not entitled to receive a subsidy when they provided care for their own children. She judged this situation to be unjust and unacceptable given that workers in regular day care centres are entitled to a subsidy even while caring for their own child in their groups, and yet their status as salaried employees is the same as that of home childcare workers.

When dealing with the individual complaints, the Québec Ombudsman noted that each and every one of them denounced section 39 of the aforementioned act, namely the section pertaining to home childcare. He did, however, also take into account the wide range of parental opinion concerning whether or not a person was entitled to a government subsidy when providing home childcare for his or her own children.

After a number of conversations with authorities from the Department, we came to agree that the situation of individuals who assist homecare providers was similar to that of childcare workers in a regular day care centre and that both groups of parents should enjoy the same privileges. What is more, it is unlikely that the lawmakers, through the wording of section 39, intended to create this sort of distinction and bring about such a series of discriminatory effects. The Québec Ombudsman thus saw to it that childcare subsidies were maintained in the case of the citizen who wished to become an assistant.

The Québec Ombudsman pointed out to the Department that once a child is looked after outside of his or her family residence, it is very difficult to uphold the view that there are major differences between regular and homecare facilities, differences which would justify the maintaining of two distinct categories of treatments and benefits. In fact, the obligations and the quality of the service to be provided are the same for both groups, and the fact of looking after one's own child is not a distinguishing criterion used by the Department in the case of regular day-care services. What is more, regular day care is not available everywhere and at all times across Québec; this is especially the case in rural areas.

The Québec Ombudsman and the Department also came to agree that the wording of section 39 should be amended so as to grant the same rights to those offering home childcare and also to regularize the departmental position concerning assistants.

In June 1999, the National Assembly adopted *An Act respecting childcare centres and childcare services* in order to enable homecare providers and their assistants to obtain financial support from the Department when their children are cared for outside their family residences. The ministère de la Famille et de l'Enfance did, however, refuse to subsidize parents who look after their children in their own homes. This decision was made in order to avoid creating a precedent concerning parents who stay at home, as well as to dispel any confusion between the role of professional care giver and parent.

The Québec Ombudsman deemed that, in the present context, the position of the Department was a reasonable one, given the legal obligations of parents with regard to their children, the potential significant financial outlay for the state, and the current social and economic situation in our society.

Ministère des Finances

Equal treatment for those in the same social situation

In the spring of 1995, the Québec Ombudsman brought to the attention of the ministère des Finances a situation which appeared inequitable for those citizens called upon to contribute to the Fonds des services de santé. Citizens having declared an annual income (excluding employment income) representing an amount equal to or less than the maximum amount of the benefits for which they would have been eligible under *An Act respecting income security* were obliged to pay into the Fonds des services de santé. This contribution had to equal 1% of the total of the aforementioned income exceeding the basic exemption of $5,000. Certain types of income were however not to be included when calculating the basis for the contribution. Thus, a person whose total annual income was made up of a disability pension of $7,437 from the Régie des rentes du Québec and income security benefits totalling $660 had to contribute the sum of $24.37 to the fund in 1994, an amount representing 1% of the amount received over and above the basic $5,000 exemption for his or her disability pension. However, this individual would have been exempted from making the contribution had his or her annual income, for all intents and purposes, been made up of income security benefits.

In 1996, the assistant deputy minister for fiscal and budgetary policies acknowledged the importance of the problem and the need to rectify the situation. The Québec Ombudsman was told that the appropriate changes might be announced in the budget speech. The same promise was reiterated the following year. In 1998, having once again received the same reply, the Québec Ombudsman contacted the minister of finance in order to explain the situation personally to him and to invite him to examine, in the company of Department officials, certain proposals designed to eliminate, without any further delay, a situation which was inequitable for a large number of taxpayers.

In the spring of 1999, the minister of finance informed the Québec Ombudsman that a new measure would be applied as of the 2000 tax year. The budget speech of March 9, 1999, thus stipulated that the basic $5,000 exemption would be raised to $11,000. Under the circumstances, the table which serves in the calculating of the 1% contribution to the Fonds des services de santé will be modified proportionately. Henceforth a number of taxpayers of modest means will no longer be required to make this contribution. The total impact of raising the contribution ceiling for the Fonds des services de santé will reach approximately 44 million dollars.

Ministère de la Justice

Government inaction: once a victim, always a victim

The *Act respecting assistance and compensation for victims of crime*, adopted on December 10, 1993, and approved three days later, created a new system for compensating victims of criminal acts. However, five years after being adopted, this law is not yet in force.

What is now being applied for victims of criminal acts is a law that is completely out of date, the *Act respecting industrial accidents and occupational diseases*. The Québec Ombudsman considers that the government must respect its commitment to provide victims of criminal acts with a compensation system that not only corresponds more closely to their specific needs but also that can be compared to other public compensation systems as concerns compensation and readaptation services.

On June 26, 1998, the Ombudsman contacted the minister of justice and public prosecutor in order to learn of his intentions in this matter. On September 25, the minister informed him that the law would not come into force because of the high cost of implementing the new system. In his 1997-1998 annual report, the Ombudsman again drew attention to the urgency of bringing this law into effect.

Given the refusal of the government to implement its own legislation, next year the Québec Ombudsman intends to suggest to the minister some ideas for improving the current compensation process for victims of criminal acts.

Ministère des Relations avec les citoyens et de l'Immigration

International and interpersonal complications ... by a nose

Concerned about the health of her brother, who is a resident of Lebanon, a Canadian citizen tried for months to get a residence permit for him from the ministère des Relations avec les Citoyens et de l'Immigration. She promised to pay all expenses related to his stay in a Québec hospital so that he might undergo an operation on his nasal wall. Her brother had already undergone an operation in Lebanon, but it was unsuccessful and didn't put an end to his serious respiratory problems. The *Regulation respecting the selection of foreign nationals* requires that a person in such a situation provide a letter from his or her doctor certifying that the required operation is not available in the person's country of origin. However, the brother was unable to provide this document, since his doctor would not acknowledge that the operation he had performed was a failure. The citizen appealed to the Québec Ombudsman.

The investigation revealed that the Department had the right to demand this document. Nevertheless, the Ombudsman pointed out that a patient needing care should not be penalized because of an interpersonal conflict. He therefore convinced the Department to accept the declaration of another specialist. Incidentally, there was an allegation of collusion involving a nephew of the plaintiff, the doctor practising in Québec and the Québec hospital where the operation was to take place and which had provided a supporting letter. Upon investigation, the Québec Ombudsman dismissed these unjustified suspicions and demonstrated the absence of any link between the people accused and the aforementioned letters.

Finally, in the name of professional solidarity, no colleague of the Lebanese doctor was willing to provide the requested document, and therefore the required proof could not be added to the file. The Department nevertheless authorized a temporary stay for the individual in Québec, while stipulating that the operation must take place in a private clinic.

The Sponsorship Agreement

In his 28th Annual Report of 1997-1998, the Québec Ombudsman stressed[11] that the collection operation "Defaulting Guarantors", directed by the ministère des Relations avec les Citoyens et de l'Immigration,[12] included a certain number of very problematic features. The Ombudsman made 23 recommendations in order to improve the situation and at the same time to rectify past errors.

It is important to emphasize that a foreign national may apply for permanent residency in Québec as a family member. In such cases, the applicant's family ties with a citizen residing in Québec are checked, and the latter must agree to provide for the basic needs of the person applying for residency. This is called sponsorship. The sponsor also agrees to repay the government for any

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[11] The Sponsorship Agreement, p. 59, 28th Annual Report 1997-1998.

[12] Formerly, the ministère des Affaires internationales et des Communautés culturelles.

social assistance benefits drawn by the sponsored immigrant.. The duration of the agreement is three years for a spouse or fiancé, and ten years for a dependent child, father, mother, etc.

Since 1995, the government has been claiming income security benefits paid to sponsored people from those who have signed a sponsorship agreement, in accordance with the commitment indicated therein.

The departments involved have followed up on a number of recommendations, in particular by revising the method of calculation used to establish the amount of the claims. Since October 1998, nearly 3,000 files have been reviewed and the total of the credit notes issued to citizens has amounted to nearly $10 million. The Department is still reassessing these files, and it is estimated that nearly 3,000 citizens will be able to benefit in the near future from a reduction in the amount that the government is claiming from them.

Moreover, a special committee has been created to study certain cases involving conjugal violence between guarantor and sponsored person. This committee will make recommendations that in turn will make it possible to cancel the claims in a number of files. The number of such cases is estimated at 250.

Other recommendations have been followed by the Department in order to avoid repeating instances of injustice. Measures have been taken to make sure that the citizens who sign a sponsorship agreement understand its financial repercussions.

Moreover, guarantors are also immediately notified when a sponsored person applies for income security benefits. Being so notified allows them once again to take responsibility for the sponsored person and thus avoid having to reimburse the government for large amounts of money, as was the case before such measures were taken.

In spite of these improvements, certain problems remain, and other recommendations continue to be discussed with the departments involved. These recommendations concern in particular the cancellation or reduction of claims in cases of lack of understanding of the contract by the guarantor, the lack of a realistic financial assessment of the capacity of the guarantor to assume his or her obligations, and the absence of any notice to guarantors when the sponsored persons apply for social assistance.

High-risk generosity!

The following saga involves two departments: the ministère de la Sécurité du revenu and the ministère des Communautés culturelles et de l'Immigration (as they were called at the time).[13]

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[13] Since June 1996, the ministère des Relations avec les Citoyens et de l'Immigration.

These departments take care of immigration issues (commitment of guarantors, respecting of sponsorship agreements, emergency aid, reimbursement to the government of any benefits paid to immigrants, etc.). Thus both departments, with their shared activities, play a part in the scenario described below, and in order to make the account less cumbersome, general designations such as the administration, the government and public authorities are sometimes used.

During the years 1989 and 1990, a Canadian citizen sponsored certain members of her family, undertaking to take care of these people who were to immigrate to the country: she guaranteed their room and board and pledged to reimburse the government for any amount that would be paid to them in the form of living allowances. The commitment was valid for a period of ten years.

Among other measures, the sponsor rented a large apartment to accommodate the entire group of new arrivals. The latter stayed there for a few years, until each one could adapt to the new environment and attain the necessary degree of autonomy. However, one of the sponsor's sisters left the residence one year after her arrival in Québec, disappeared and refused to have any more contact with her sponsor. The latter managed to find the fugitive and rented an apartment for her, which the sister refused to inhabit. Once again the sponsor lost track of her.

In 1992, the sponsor informed the ministère des Communautés culturelles et de l'Immigration of the situation, explaining that her sister refused any support except in the form of cash. At the same time, the sponsor rented another apartment for her sister, saw to it that the lodging was furnished and even provided food. It was to no avail. The expected occupant didn't even set foot there. From 1993 until 1997, there was no news from her.

Meanwhile, this unpredictable sister had married and was receiving income security benefits according to the rates established for a couple. However, the marriage was on the rocks, the couple were not living together on a regular basis, and the beneficiary was denounced for fraud and for providing false declarations concerning her place of residence. The sponsor was not notified of this denunciation.

In 1997, after five years of silence, the ministère du Revenu du Québec seized the sponsor's tax return under the pretext that she owed the government more than $12,000 to reimburse the emergency payments granted to her sister.

In order to avoid other claims of that nature and to meet the requirements that continued to be imposed on her as guarantor, the sponsor rented a third apartment for her sister, also providing her with enough money for food, transportation and other personal expenses. These new initiatives did not lead to the hoped-for results, for the sister did not live in the place and merely left behind a few objects as evidence of a brief stay.

During the following nine months, the sponsor tried to convince the administration that she no longer had any control over what her sister was up to. The government was not very sensitive to all these difficulties and forced her to maintain her commitment (room and board), threatening, if she did not comply, to pay income security benefits to her sister and to charge her, as sponsor, for them afterwards.

In 1998, the sponsor received a letter from the departments involved specifying that she seemed to be meeting her obligations and that in view of her sister's attitude, she could stop renting the apartment. She took this step immediately. However, in spite of this decision and of all the evidence contained in the file, the Bureau des garants défaillants of the ministère des Communautés culturelles et de l'Immigration refused to recognize that she had fulfilled her obligations. Thus each time the sister applied for income security benefits, claiming that she had no roof over her head and no resources, the sponsor had to offer explanations, provide certificates, and pay for the rental of a new apartment and other living expenses. Seeing no other way out of the situation, she appealed to the Québec Ombudsman.

During his investigation, the latter repeatedly asked the Bureau des garants défaillants to carry out the necessary research by sending an investigator to the premises. The employees that he contacted refused to intervene, considering that this case was merely a "family matter". Moreover, a year later, when various pieces of evidence recorded in the file did indeed confirm that the sponsored sister no longer lived in the apartment provided for her, the Bureau still refused to accept the sponsor's version.

Therefore, the Ombudsman suggested, among other solutions, a trial period of one month, during which time the sponsor would rent another apartment (the fifth!) for her sister, who, for her part, would receive income security benefits that would not have to be reimbursed by the sponsor.

Meanwhile, the behaviour problems of the sponsored sister grew more serious: she harassed her family, became a danger to her own children and pestered her social workers by creating a big fuss about her situation. The result: the resource persons involved harassed the sponsor in turn, because they were completely unaware of what had already transpired. The situation became intolerable for the sponsor who, almost ten years earlier, without realizing it, undoubtedly showed high-risk generosity.

Finally, after a year of procrastination and opposition on the part of public authorities to the solutions proposed by the Ombudsman, the administration agreed not to claim reimbursement of income security benefits that might be paid in the future. On the other hand, it would not cancel the $12,000 debt, even though the problems were obviously the result of the psychological state of the sponsored sister, who is currently being detained for psychiatric treatment in accordance with a court order. To be continued.

Ministère des Ressources naturelles

Tree cutting and the opposition of residents: the Department does nothing to bring people together

The people living on the shores of two lakes formed an association and opposed the tree-cutting operations and the cutting methods used under a contract for forest management and supplies approved by the ministère des Ressources naturelles.

Since the beginning of 1998, the members of this association have been attempting, through repeated contacts with Department administrators and the forestry companies, to find solutions which satisfy all interested parties. All in vain: they were met with refusals and sensed that there was connivance between the civil servants and the contractors. They finally asked the minister to appoint a conciliator, as provided for in the *Forest Act*, in order to end the deadlock. Again the Department refused. Later the same year, these people appealed to the Québec Ombudsman, denouncing the attitude and decisions of the administration.

The Ombudsman's investigation revealed that the data transmitted to the higher authorities of the Department by the local and regional divisions involved were only partially exact or incomplete, when not totally false. The Ombudsman therefore intervened with the departmental authorities concerning this matter, and the desired conciliator was appointed in order to bring the parties closer together. After several meetings in 1999, the conciliator's report was submitted to the Department and approved. In substance, the report confirmed most of the points raised by the aforementioned association and suggested that a monitoring committee be set up, composed of representatives from the forestry companies and the lakeside residents' association, in order to promote effective consultations throughout the duration of the tree-cutting operations to be carried out in this sector.

Ministère du Revenu

And what about the citizens' interest?

A taxpayer received a notice of assessment from the ministère du Revenu awarding him a tax refund of approximately $600 for 1997. However, the sum was withheld by the support payment collection services, which come under the same department. This is a common practice when support payments are due. However, in this case, the taxpayer was entitled to a balance of more than $550, and he didn't receive his cheque until five months later, without being paid interest for the delay. The citizen complained to the Québec Ombudsman since the Department refused to pay him interest as compensation for the time that had elapsed between the sending of the notice of assessment and the issuing of the cheque.

In the course of his investigation, the Ombudsman learned that the ministère du Revenu never paid interest on tax refunds when the delay in payment was due to a deduction made by the Direction de la perception des pensions alimentaires. The Ombudsman expressed the view that this way of doing things was unreasonable, especially since the collection services remained an integral branch of the ministère du Revenu. He intervened with the Department along these lines, and a week later, the administration informed him that they agreed with him and that from now on, interest would be paid in similar cases. As for the citizen, he received the interest to which he was entitled.

Exorbitant security deposit and a questionable transfer of accounts

A taxpayer had a twelve-year-old tax debt. It initially amounted to $700 but had ballooned to $3,000 by 1998, due to accumulated interest. However, during the preceding years, the ministère du Revenu had taken no steps to recover this debt.

In 1998, the same taxpayer formed a company with another person, and they then asked the Department for tax registration numbers. The collection agent of the ministère du Revenu requested a security deposit of $1,200 from the new company to grant the registration, without recognizing the possible connection between the company and the taxpayer's debt. The latter agreed to pay the security deposit by cheque. However, the cheque was not cashed immediately, and when the money was to be withdrawn there were insufficient funds in the account. The citizen was informed of this problem and wrote a new cheque backed up by the necessary funds. However, in the meantime, the Department had proceeded to seize the revenue of the taxpayer from the company, and the tax collection agent had suggested that prior to a discharge of seizure, the deposit of $1,200 be applied to the citizen's personal debt. The latter, questioning this way of proceeding, appealed to the Québec Ombudsman.

After analyzing the situation and the pertinent legislation, the Ombudsman observed that the Department could have reasonable fears that the debt would not be paid. Nevertheless, there was

no legal basis for requiring that such a deposit be made. As a matter of fact, in this case it was appropriate to separate the personal tax debt from the company's finances.

As a result of the Ombudsman's intervention, the deposit was returned in full to the taxpayer. At a later date, he could apply it to his personal debt, but it would be up to him to make this decision.

The administration must not set impossible requirements

In 1998, a taxpayer was notified in writing by the ministère du Revenu (as a result of a preliminary assessment) that she had to reimburse over $530 for the fiscal years 1995, 1996 and 1997. At issue were deductions for a person living alone or with one or more dependent children.

This claim needed to be clarified, and the woman contacted the Department, finally learning that, during the years in question, she had applied for and obtained the tax credit for a person living alone. However, since her daughter was using her address, the Department had recently concluded that they were living together and that, for this reason, the mother was not entitled to the tax credit.

The taxpayer then explained to the person in charge of her case that her daughter did not actually live at her home during these years and that the latter used her mother's address only as a means of receiving her tax refund cheque. The administration then demanded that the daughter provide written proof, for instance a lease or a telephone or electricity bill. However, to make matters even more complicated, the girl did not have a fixed residence and thus could not produce the documents required. The discussion ended there, and the Department notified the taxpayer that the notice of assessment demanding reimbursement would follow its course and would reach her within the next few days. The mother appealed to the Québec Ombudsman.

A discussion with the Department led the latter to accept other evidence that could provide the required proof. A letter from an employer was produced to confirm that the daughter's place of work was located more than 200 kilometres from the mother's place of residence. Evidence of residence provided by shelters also established where she had been living during the last few years.

The story of a father who didn't want his daughter's income

A man turned to the Québec Ombudsman for help with a problem arising from a very simple fact that nevertheless had managed to complicate his existence: his daughter had the same first name as he did. Although she had been living outside of Québec for a number of years, she gave her father's mailing address to the financial institution where she kept an account for business reasons. On her annual interest statement, the daughter's name and social insurance number were

clearly indicated, and this document was enclosed with the young woman's tax return. However, for two consecutive years, the father had to appeal to the Ombudsman because the ministère du Revenu had added his daughter's interest income to his own tax return.

During the second intervention by the Québec Ombudsman, it was agreed that the Department would put a special code in the taxpayer's file to avoid a repetition of the error.

Complexity of the tax system and confusion between an office located in a residence and a bed and breakfast

Some citizens were using part of their residence to operate a bed and breakfast. In their tax return, they claimed business losses (profits less than expenses) for the years 1993, 1994 and 1995. In the notices of new assessment sent to them by the ministère du Revenu, certain expenses that they had claimed were deferred and their losses were revised downward. In support of its decision, the Department specified that the expenses relating to the residence were limited to the income drawn from the business for which they were claimed. Therefore, these expenses could not cause or increase a business loss. However, the surplus for one year could be deferred to future years against business income. Not satisfied with this position, the couple turned to the Québec Ombudsman.

The complainants first of all informed the Ombudsman that they had produced their tax returns for 1993, 1994 and 1995 on time. At that point, they evaluated the tax to be paid according to information received from different sources at the Department. As a matter of fact, before purchasing the building to be converted into a bed and breakfast, they had inquired about how possible losses would be processed. They were assured that these losses were deductible, but that they could count on making quite a tidy profit from the business. The employees whom they consulted never mentioned that these expenses could not be used to claim or increase a loss and could at the same time be deferred to another year. Moreover, after receiving the notices of new assessment, the taxpayers once again questioned the employees of the ministère du Revenu and were given similar answers.

When the Québec Ombudsman made inquiries at the Department, he was given the same information as the couple had obtained. The Ombudsman then drew the Department's attention to the fact that the provisions applicable in such a case were to be found in a section of the act entitled "Workspace in home". The title of this act does not properly reflect the contents of the text; thus there was no reason for the taxpayers to refer to it in order to look for the necessary information. The Ombudsman therefore reminded the Department that it was its duty to be transparent and responsible for its own actions.

The Québec Ombudsman requested that:

- the act be amended to specify the applicability (if such was the lawmaker's intention) of the relevant provisions to bed and breakfasts;
- the Department re-examine its position regarding the file, given the gaps in the information conveyed by its employees to the owners of the bed and breakfast;
- the notice of new assessment be cancelled;
- Department employees be informed of the contents of the act pertaining to bed and breakfasts.

As a result of the Ombudsman's intervention, the case involving these taxpayers was settled out of court and to their advantage. Moreover, the passage in the *Taxation Act* that needs clarification is currently under study, and the same observations apply to the user's guide related to it. Finally the employees and the higher authorities involved were reminded of the importance of giving taxpayers information that is rigorously accurate.

The vagaries of computers are a poor excuse indeed

A woman had been a beneficiary of the rental subsidy program Allocation-logement (formerly called "Logirente") for several years. Since she did not receive her payment for the month of October, she called the ministère du Revenu. An agent told her that, due to problems with the computer system affecting people using direct deposits, there were some delays in payment. For this reason, she would receive the October and November cheques with the December 1st payment. Since she needed the money to pay her rent (which is, after all, the whole purpose of the program), the citizen appealed to the Québec Ombudsman.

In the course of his investigation at the ministère du Revenu, the Ombudsman observed that approximately 1,500 program participants were affected by delays due to the computer system. Since it is urgent for these low-income people to receive their allowance, the Ombudsman recommended that the Department make the scheduled payments as soon as possible.

The Department finally issued the October payments in the following month, thus enabling a good number of people to pay their rent on time.

In such a context, it is unacceptable for the Department to hide behind the unpredictable whims of the computer system to justify its own deficiencies. It must instead keep in mind the consequences that arise when needed sums of money do not reach disadvantaged people in time.

How can someone prove that he or she lives alone?

During the last few years, the Québec Ombudsman has received a number of complaints from citizens who received a preliminary tax assessment from the ministère du Revenu refusing to

grant them the non-refundable tax credit for a person living alone or with one or more dependent children. After studying the matter, the Ombudsman pointed out a number of deficiencies in the auditing program:

1) The preliminary assessments were not sufficiently substantiated. In fact, in order to be able to present pertinent explanations and evidence, the taxpayer should be able to obtain more information concerning the facts on which the preliminary assessment is based.

2) Some preliminary assessments were sent before the Department had analyzed the evidence that the taxpayers had already provided along with their tax returns. Instead, the Department was actually requiring taxpayers to produce evidence all over again, whereas, in many cases, the necessary information was already contained in their tax file (for example, their employment record at the right address). The Department should not demand additional documents unless those already in the files turn out to be inadequate. Administrative convenience must not prevail over respect for taxpayers and the presumption of good faith.

3) The Department should also notify taxpayers from the start concerning what evidence it considers admissible. It must be transparent and responsible for its acts, given the three-year time period granted by law for auditing taxpayers' returns. The Department should specify, in the guide that accompanies the income tax return, that during audits it can demand any other evidence judged necessary, in addition to the Schedule 4 already produced with the return, if the latter should turn out to be insufficient in itself to prove the taxpayer's right to a tax credit. These clarifications provided by the Department would prevent taxpayers from getting rid of evidence before the time limit expires, evidence that might no longer seem valid but which could, if need be, support their claims. Because of the wording of the guide, the ordinary taxpayer may conclude that the pieces of evidence that he or she ought to keep are those identified on line 362 of the tax return, which has to do precisely with the deduction for a person living alone or with one or more dependent children.

4) Preliminary assessments require an answer from the taxpayers in question within 21 days. However, these assessments often reach the taxpayers when part of this time has already elapsed. The Québec Ombudsman considers it necessary for the Department to extend the time limit, for the very good reason that it is more and more difficult to obtain an extension directly from the Department since its telephone lines are often completely tied up and not enough personnel are available to take taxpayers' calls (for example, preliminary assessments are sent to taxpayers just before the Christmas holiday period so they are being invited to contact the Department at a time when most staff members who are authorized to answer their questions are on vacation).

5) Certain details of addresses were not taken into account when comparing taxpayers' addresses. After a number of discussions, the ministère du Revenu made the corrections suggested by

the Québec Ombudsman. First of all, the guide to the 1998 tax return was modified where taxpayers are advised to keep all documents that can justify their request, while specifying that evidence such as a lease, a home insurance contract and telephone and electricity bills can be requested later on (page 33 of the guide). The processing procedure was also modified: no preliminary assessment can be sent out without the information contained in the files of the taxpayers concerned being checked in advance. Moreover, the working instructions were changed in order to authorize the divulging of the name of the person presumed to live at the same address as the taxpayer to whom the preliminary assessment was addressed. However, this information is only given with the consent of the taxpayer in question, and the name is the only element of identification that is provided.

Support payments

The number of requests for intervention received during the 1998-1999 fiscal year increased slightly compared to the preceding fiscal year (+6.3%) and amounted to 962 such requests by the end of March 1999. Of this number, 671 requests were the subject of a thorough investigation and resulted in a total of 375 justified complaints (reflecting a 39.3% rate of substantiated claims).

These complaints concerned the overall operations of the system: waiting periods, the Department's lack of transparency, administrative problems, the low level of harmonization with the ministère de la Solidarité sociale and, finally, the cumbersome nature of the system itself, in particular as concerns the collection process when debtors are moonlighting or when they transfer their possessions to another party.

Waiting periods

Since the *Act facilitating the payment of support* came into force, waiting periods have been the main source of dissatisfaction with the new system. They occur at all stages in the processing of a file: assignment to an agent, initial processing, monitoring (when the decision has been modified), transfer to a collection service (when the first steps to collect the support payments have been fruitless), assignment to a collection agent, processing, transfer to another agent for investigation, etc. Waiting periods are also characteristic of all types of files: new rulings, files created following a declaration of non-payment, files forwarded by the ministère de la Justice, etc.

■ **Waiting periods for assignment to an agent**

In September 1997, the waiting period for the assignment of a file to an agent for processing varied between 4 and 8 months depending on the office responsible (Quebec City or Montreal) and the type of file. Confronted with this problem, the Québec Ombudsman had to show a spirit

of initiative. Lists of files that needed to be assigned to an agent with the utmost urgency were regularly sent to the Department by fax. The Department responded to the requests that were forwarded in this way, but the problem remained unsolved for citizens who did not contact the Ombudsman.

Recent departmental data (March 1999) concerning such waiting periods are more encouraging:

- two months for new rulings;
- five months for files created following a declaration of non-payment;
- of the files forwarded by the ministère de la Justice, 3,000 were still left to be processed.

The departmental objective was to reduce waiting periods to one month for new rulings and two months for the others by June 1999.

■ Other waiting periods

When citizens complain about the waiting period for the processing of their files, they are at the same time denouncing various underlying difficulties. The problems related to the waiting periods represent a genuine Pandora's box and belong to a hybrid category: they both cause dissatisfaction with the new system and reflect a more deeply rooted problem, arising essentially from a shortage of personnel and a computer system that is inadequate and poorly programmed.

In his special report released in June 1998, the Québec Ombudsman recommended that the Department take the necessary measures to rectify a situation which threatened to deteriorate in the event that human and material resources did not suffice to meet the demand for them.

By October 1998, his recommendation had produced concrete results: the Conseil du trésor granted an additional $2.5 million to the minister of revenue for the administration of the collection system. With these additional resources, it was possible to hire 186 new employees and to pursue efforts to improve the computer system.

The Department's lack of transparency

In spite of repeated recommendations issued by the Québec Ombudsman, for more than two years the Department continued to conceal information that directly concerned interested parties. Given the waiting periods for processing files, such an attitude contributed to increasing the anxiety experienced mainly by creditors waiting for their support payments. This comprehensive file, which was created in 1996, finally yielded results in September 1998. The Department then

issued a directive instructing its employees to provide the parties with all the information they needed, without, however, breaching the rules of confidentiality.

Administrative problems

During the fiscal year 1998-1999, the Québec Ombudsman looked into two serious administrative problems caused mainly by the poor programming of the computer system.

1. Advances

In accordance with section 36 of the *Act facilitating the payment of support*, the minister can make support payments in the name of the debtor for a maximum of three months, up to the sum of $1,000. These payments constitute advances.

In theory at least, the validity of this provision is undeniable. The creditor should not be penalized for the administrative delays which characterize the collection procedure involving deductions at source (notice to the employer, delivery of amounts collected, cashing, etc.), hence the possibility of obtaining advances during this period.

In practice, however, the granting of "advanced" sums, rather than providing relief for the creditor who is grappling with a tight budget, has actually increased his or her indebtedness.

Let us examine under what circumstances this might occur. In principle, advances are collectable from the debtor since they are paid in his or her name. However, there is an exception to this rule. When a judgement retroactively cancels the support payments and advances have been paid during this period, the Department will claim the amount of the advances from the creditor under section 33 of the *Act facilitating the payment of support*.

> "**33.** Any creditor of support who receives from the Minister an amount to which he is not entitled shall reimburse that amount to the Minister."

Here's the rub: no-one knows about the existence of these advances, neither the judge, nor the lawyers, nor the debtor, not even the creditor who has always received cheques where it is written: "This amount is paid to you as support." As a result, the question of whether it is the debtor or the creditor who will reimburse the advances has never been brought before the courts. When the new judgement is sent to the ministère du Revenu, the creditor learns with consternation that he or she owes the Department money.

The Québec Ombudsman has therefore recommended that the Department inform the parties about the existence of these advances and of the consequences of a retroactive cancellation of support payments. In the absence of an answer or of measures adopted in this respect, the

Ombudsman repeated his recommendation a number of times and finally learned that because of the way the computer system was programmed, it was often impossible to determine with any degree of accuracy the amount of advances granted for a given period!

2. Calculating Arrears

It is not always easy to establish the amount of arrears in support payments accumulated by a debtor. To do so, various operations are necessary:

- determining the date of eligibility for support. In other words, establishing the starting date for calculations. In the case of a petition for separation or of a divorce proceeding, that date corresponds to the date of the actual decision. On the other hand, if the case at hand involves a petition for provisional or accessory measures, it is the date of service of the petition that becomes the starting date;

- indexing the amount of the support payments on January 1 of each year (or on the anniversary date of the decision in certain cases), according to the rate in force;

- calculating the pro rata of days if applicable;

- calculating the sum already collected from the debtor:
  - for files activated prior to May 16, 1996, including, if applicable, the amounts seized by the ministère de la Justice:
  - making sure that the amounts collected in order to gradually build up a guarantee are kept separate and do not enter into the calculation of arrears;
  - taking advances into account.

- calculating the amounts already paid to the creditor:
  - if the creditor is receiving or has already received income security benefits, making sure to include the amounts paid to the ministère de la Solidarité sociale, either by the ministère de la Justice, by the ministère du Revenu, or by the debtor him or herself.

- taking into account that most debtors are paid weekly or every two weeks.

There will therefore be 52 or 26 deductions per year, according to the case. On the other hand, payments to the creditor are made on the 1st and 16th of each month, for a total of 24 payments per year. The result is that the amounts deducted and the amounts paid do not tally.

It remains to be seen whether the system will be able to take all these data into account. Be that as it may, a number of citizens are contesting the calculations carried out by the Department.

A real-life situation

The following example illustrates the twists and turns involved in the calculation of support payment arrears.

A woman contacted the office of the Québec Ombudsman in January 1997 to contest the amount of arrears she was to receive, established by the Department at $33. According to her calculations, she was owed $2000 in arrears.

The investigation revealed that both parties (Department and creditor) were actually mistaken: the former, because it had wrongly interpreted the judgement,[14] and the latter, because she had neglected to factor in certain amounts received directly from the debtor.

After doing all the calculations, the Ombudsman established the arrears at $801, to the satisfaction of both parties. All's well that ends well.

Or so it seemed. A week later, the debtor met with the Ombudsman, a suitcase in his hand. He had asked to be reimbursed for an overpayment. The Department had turned down his request, alleging that he owed $801 in arrears! But according to what the debtor said, pointing to the suitcase, he could provide all the necessary evidence of payment.

The suitcase contained photocopies of cheques and cumulative amounts deducted by the employer. There was no doubt about it, he was right: he had paid too much. The overpayment amounted to $327.

After the Department obtained the necessary documents, the calculation was redone. On June 4, a new judgement was handed down and the support payments were reduced. It took a while for the Department to make the necessary adjustments. As a result, the amount of the arrears diminished and the overpayment increased. The new calculations assessed the arrears at $459 and the overpayment at $710.

The Department couldn't track down these amounts. Since the citizen had already received income security payments, the Ombudsman turned to the ministère de la Solidarité Sociale, which didn't react. Actually, this department had closed the file. As for the ministère de la Justice, it had handed over all the amounts seized during its handling of the affair.

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[14] The judgement provided for the suspension of support payments during the time the debtor was out of work. Confusing "suspension" and "cancellation", the Department had not taken into account the amounts owed during this period.

The Ombudsman observed that the ministère du Revenu's accounting was not quite up to scratch and recommended that the parties be reimbursed without any further delay. The Department complied.

Computer problem? Human error? Highly questionable management, at any rate.

The lack of harmonization between the MRQ and the MSS

The management of surrogate files is rather inconsistent, and a number of creditors who should normally receive support payments are still living on social assistance, with emergency income security benefits as their sole means of support.

The Québec Ombudsman's investigation revealed that the difficulty is caused by a lack of coordination in the exchange of information between the two departments. In November 1997, a draft agreement was reached and an operating committee was created. However, the introduction of electronic exchanges has been postponed until further notice.

With the adoption of the measure exempting support income[15] in June 1998, the situation became urgent, and the Ombudsman again recommended – in a special report – that the departments speed up the implementation of the computer link.

A cumbersome system: problems related to moonlighting

After more than three years of operation, the collection system doesn't seem to be providing the hoped-for results as concerns debtors in bad faith who are part of the underground economy. The Québec Ombudsman is of the opinion that the department's technicians do not have sufficient

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[15] It must be stressed that, for the ministère de la Solidarité sociale, support payments are considered to be income that must be deducted from the amount of the benefits established according to the scale applicable to the family.

The new measure stipulates that any family which includes at least one child under five years old is entitled to an exclusion of support payment income of up to $100 (on a monthly basis). It follows that if support amounts to less than $100, it will be totally exempted.

In other words, the family in question – a single-parent family in most cases – will receive an additional cheque for $100 per month, which corresponds to an increase in its income of 16.7% (since the basic benefits for a single-parent family in the non-available category amount to $603 per month).

In order for the new measure to be applied; the support payments must be collected (by the MRQ) and transmitted (to the MSS). To make a long story short, no collection, no exemption.

By facilitating the exchange of information, the electronic link will help reduce the waiting periods caused by the transfer of the amounts collected; this period is currently thirty days.

means at their disposal in this regard. As a matter of fact, even if the Centre de perception fiscale has restrictive powers, it cannot not always exercise them. In order to be effective, the Department would have to, when necessary, question various witnesses, which would of course necessitate field personnel. However, in spite of what is stipulated in section 58 of the *Act facilitating the payment of support*,[16] no-one is actually authorized to carry out such investigations. Let us recall that the ministère du Revenu has been entrusted with the collection of support payments because it ostensibly has the means to do so. In 1993, the Québec Ombudsman in fact suggested this very avenue:[17]

"Furthermore, in a number of American states, the Revenue Department is responsible for the collection of support payments, as they are the best placed of all departments, and certainly better equipped than the others to know the address and solvency of taxpayers. In fact, revenue departments have investigators skilled in detecting delinquent taxpayers ...."

Indeed, there exists within the ministère du Revenu an independent auditing unit whose investigators are vested with the powers of investigating commissioners. The processing of a file that is being audited does not necessarily have to be initiated by the creditor and does not have to be carried out based on the amount of the sums collectible.

In his special report released in June 1998, the Ombudsman therefore recommended to the Department that priority be given to support claims during the auditing processing. The authorities agreed to this, but the problem persists because the "support payment" files are not always transmitted for auditing.

While he is aware that the problems related to moonlighting will not be settled overnight, the Québec Ombudsman is of the opinion that the Department should make every effort to foil debtors in bad faith. The health of children is at stake.

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[16] Section 58 stipulates that the minister or any other person whom he designates as investigator can investigate any fact and any information related to the collection of an overdue amount. For this purpose, the minister and the investigator are vested with the powers and the immunity of commissioners named in virtue of the *Act respecting public inquiry commissions* (R.S.Q., chapter C-37), except as concerns the power to order imprisonment.

[17] QUÉBEC OMBUDSMAN. *Child Support. Proposals for Reform.* 1993.

Ministère de la Santé et des Services sociaux

Suicide among clients of youth centres: we must act now

The parents of an adolescent who committed suicide at the age of 14 turned to the Québec Ombudsman. They had appealed to the services of a youth centre for help for their son. However, although the various intervenors had been warned of his suicidal tendencies, they did not have him see a child psychiatrist, judging that the intervention of people who were competent in the area of behaviour problems (counsellors, psychologists) would be sufficient.

According to the parents, their child's mental health should have been evaluated and the boy should have received treatment; they felt that the lack of appropriate measures had been a determining factor in the events that followed. Moreover, the parents alleged that this situation was the rule, not the exception: the various social and medical intervenors did not work together to treat young people with suicidal tendencies. This lack of dialogue and collaboration, exemplified particularly by refusals or oversights when it came to referring young people at risk to psychiatrists, could lead to the loss of dozens of human lives every year. It was therefore urgent to take action on all fronts.

The Québec Ombudsman consulted the Association des centres jeunesse du Québec as well as the Collège des médecins du Québec. After various discussions and exchanges of information, he came to the conclusion that there did indeed exist a serious problem of linkage among the various agencies and professionals involved, as concerns referrals and access to specialized psychiatric resources for purposes of consultation, diagnosis, evaluation and treatment of mental health problems, in particular regarding young people with suicidal tendencies in youth centres.

This situation seemed to him to threaten the very first right recognized in the *Charter of Human Rights and Freedoms*, namely the right to life. Moreover, following these discussions, he had good reason to believe that certain important provisions of the *Act respecting health services and social services* were being systematically circumvented, thus endangering the health and even the lives of many young people. Mention must be made in particular of section 101, which imposes on certain facilities the obligation to "dispense the required health or social services directly, or have them provided by an institution, body or person with which or with whom it has entered into a service agreement."

The Ombudsman convinced the Association des centres jeunesse and the Collège des médecins to form a work group made up of representatives of the three agencies in order to suggest means for creating a genuine interface between the medical and social networks. More specifically, this group had as its mandate, after identifying the target clientele and assessing the scope of the problem, to suggest concrete means for linking up resources from the medical and social sectors. It was also necessary to clarify their respective roles and the relations that the intervenors ought to maintain among themselves during interventions. The essential purpose of all these measures was to ensure that young clients of youth centres had access to all the care and services they

required, as quickly as possible and in a climate of dialogue which would include all those involved.

The committee, composed of four doctors (including both specialists and general practitioners), four experts from the youth centres and four delegates from the Ombudsman's office, began its work in January 1998 and submitted in its report to the three agencies in March 1999.

The report revealed that suicide among young Quebecers is a serious public health problem. For example, between 1961 and 1991 the suicide rate among young boys between 15 and 19 years of age increased by 1,635%.

The work group also became acquainted with various studies which suggested that approximately 85% of all young people who commit suicide suffer from mental health problems. Moreover, it has been observed that the young people who make use of youth centres are particularly at risk. The number of suicide attempts among the latter is apparently 4 to 10 times higher than among the population of young Quebecers in general. It is therefore of the utmost importance that psychiatric consultation and treatment services be accessible as quickly as possible to young people who display suicidal tendencies.

After examining the causes of the lack of collaboration between the various intervenors (prejudice regarding mental problems and their treatment, different and sometimes even conflicting training and professional approaches, administrative roadblocks, lack of time and resources), the committee formulated 24 recommendations for the government, the facilities and the professional corporations involved, as well as for the teaching institution responsible for the training of health and social service professionals.

These recommendations touch on subjects as varied as research in the area of suicide, the drawing up and implementing of detection and intervention agreements, collaboration among facilities and the training of intervenors, as well as, naturally, the issue of access to necessary resources in all regions of Québec.

The heads of the three agencies ratified the report and released it on April 15, 1999, during a press conference held jointly with Mr. Gilles Baril, the minister for health, social services and youth protection. The minister responded favourably to the report, stating his unequivocal commitment and that of the government to taking all necessary measures to reduce suicide among young people.

On April 29, 1999, the minister announced his plan of action and the release, to this end, of $27.5 million per year for each of the next three years; some of this money will be used, first of all, to reduce the pressure on direct services in certain youth centres, another portion being reserved for the prevention of suicide, the training of youth centre intervenors and the fight against alcoholism and drug addiction.

Moreover, bi-partisan work groups are developing training programs for doctors and social intervenors concerning different types of psychopathology, while others are working on drawing up and concluding draft agreements and intervention protocols.

The Québec Ombudsman is also following with a great deal of interest the actions undertaken in other circles, especially in schools, which are particularly important nerve centres in any effort to combat suicide among young people. In this respect, we should underscore the vast prevention campaign that is being initiated in Québec high schools as part of a pilot project that has been conducted since November 1998 by the Fondation québécoise des maladies mentales. Because of this initiative, during the next three years more than 300,000 young people between the ages of 14 and 18, as well as close relatives, parents, teachers and intervenors, will be made aware of the outward signs of mental illness and suicidal tendencies.

It is also important to recognize the efforts of all those who work with young people. With the passing years, they have seen an increase in the level of distress among a growing segment of our youth, while at the same time resources have been dwindling. Many of these individuals have put a great deal of effort into discovering thousands of ways to help young people, and their efforts are continuing.

It is to be hoped that the abundant information disseminated when this report was released, and ever since, will give them new energy to keep on helping our distressed youth and to demand access to the appropriate resources and services, at the right time and in the right place, for those who need them.

A youth summit is to be held in February 2000. We can only hope it will help make the general public more aware of the distress felt by certain adolescents, so that everybody may come to understand that young people who can dream of the future should also feel capable of making their dreams come true.

An over-hasty closing with painful consequences

An elderly handicapped woman was residing in a hospital centre. However, this facility was being closed down due to a decision made by the ministère de la Santé et des Services sociaux. She was therefore transferred to another centre where major renovations were being carried out, in the midst of constant noise and dust. To make matters worse, her room was particularly close to where construction debris was being removed. Less than two months after being moved, the elderly lady died and yet the first hospital, where it would finally have been better for her to end her life, was not yet closed. With hindsight, her son felt that it was a shame his mother couldn't have lived out her last moments in the calm surroundings that were familiar to her, away from the bustle of a construction site.

This is the substance of the account and the reasoning that the son emphasized when he decided to appeal to the Québec Ombudsman concerning a bill that he had received for the accommodation of his mother during the period when she was forced to change facilities. In his view, his mother had not benefited from the comfort and quality of care that her condition required, and the general conditions of the aforementioned accommodations were far from normal or satisfactory.

The Québec Ombudsman's investigation confirmed the accuracy of the son's allegations. The Ombudsman's intervention led the Department to cancel its claim.

Ministère de la Sécurité publique

Correctional services

On January 25, 1999, the Québec Ombudsman released his special report concerning Québec's correctional services. The report was drawn up in response to a 93% increase in complaints over a four year period (1994-1995 to 1997-1998) and it suggested certain comprehensive interventions to improve the system.

In it, the Ombudsman observed that the situation is critical in detention centres, where such phenomena as a considerable increase in drug trafficking and in criminality related to this activity, violations of human rights and abuse of power, insufficient resources, hygiene and cleanliness problems and threats to safety have been noted.

Moreover, during the past few years, the rate of justified complaints has been higher in large facilities. In 1997-1998, this rate was 34.8% for facilities with a capacity of over 300, 25% for medium-sized centres (100 to 300) and 23.6% for small centres (fewer than 100). What makes the situation even more worrisome is that it is occurring at a time when the government's budget cutbacks have brought about cuts in personnel and services, which in turn impact upon the guarding, supervision and social reintegration of convicts.

Unless energetic measures are taken, the Ombudsman fears that both the mission of the Services correctionnels du Québec and the shift toward alternative measures to imprisonment will be endangered. He has formulated 53 recommendations to the Services correctionnels and to the government, including the following:

- reinforcement of the 1993 policy on zero tolerance for illicit substances and the strengthening of controls;
- proper treatment of drug addiction;
- implementation of the majority of coroner Anne-Marie David's recommendations concerning suicide (September 14, 1997);
- respecting of the legal limit of 72 hours in cases of administrative segregation;
- a halt to disguised disciplinary measures;
- a reasonable application of temporary leave programs;
- implementation of the social reintegration program, by resuming and increasing work, training and leisure activities;
- implementation of a classification procedure: application of the principle of dividing inmates into living units as a means of promoting their social reintegration;
- the closing of the Sorel facility or the carrying out of the necessary renovations to it;
- abandonment of confinement lasting 23 hours out of 24;
- respecting of the limit of two prisoners per cell;
- limitation to a strict minimum of transfers of prisoners from one facility to another;

- conclusion of agreements with centres or houses that meet minimum security norms;
- proper evaluation of the needs of female inmates in order to better adapt intervention methods to their requirements;
- application of the appropriate confinement measures, with regular supervision, after prisoners have undergone a medical examination;
- respecting of medical prescriptions;
- a search for humane solutions for prisoners suffering from mental health and intellectual deficiency problems;
- making sure that de-institutionalization takes place only if competent resources are available in sufficient numbers within the community;
- an end to budget cutbacks;
- an increase in staff.

It is the Ombudsman's duty, moreover, to underscore the collaboration of authorities from the ministère de la Sécurité publique in the exchanges of opinion that took place in the weeks following the tabling of the special report. The decision of the authorities to draw up an action plan for implementing the Ombudsman's recommendations seems to indicate that the Department is determined to correct the problems pointed out in the report. To this end, a committee in charge of carrying out an assessment of the internal system for processing complaints from detention facilities has been struck, in accordance with one of the Ombudsman's recommendations.

Good-bye and good luck!

On the eve of his release, a prisoner asked the Ombudsman to intervene so that he could get back home!

As a matter of fact, although the man was considered to be destitute (without money or resources), the detention centre where he had served his sentence refused to pay for his bus ticket to his home town. The authorities offered him all in all a subway ticket to leave the city. The reason: no payment agreement had been reached with the transportation company that served the town where he wanted to go.

After analyzing the case, the Ombudsman observed that the centre's policy did not provide for any type of financial assistance for newly released prisoners. However, the applicable regulation stipulates that an inmate who has neither money, nor clothing, nor the means of getting to his residence must be able to get the necessary assistance from the administrator of the centre.

Since the internal policy obviously contradicted this provision for purely formal reasons, the Ombudsman requested that the detention centre give the person enough money to cover his bus

ticket. His request was granted. Moreover, the facility was forced to review its policy in this regard.

Denial of fundamental rights: overstepping the bounds of appropriate punishment

A citizen was jailed in a detention centre while awaiting trial. Shortly after his arrival, the head of the unit decided that this prisoner must be placed in "administrative segregation" as a result of conjectures offered by another prisoner concerning the trafficking of narcotics. The prisoner was immediately subjected to a thorough search, but to no avail. However, there were lingering suspicions: the man might be hiding drugs in condoms that he might have swallowed before entering the prison, so as to be able to sell the narcotics therein contained inside the walls. Administrative segregation (examination of stools, X-rays) could perhaps help in separating the truth from the conjecture.

However, although the prisoner was quite willing to undergo an X-ray, the first examination took place only two days after he was placed in administrative segregation. Since the result of the X-ray was inconclusive, the watch was maintained. Four days later, the prisoner was still in administrative segregation.

During the next two days, other X-rays were taken and the last one was more clearly negative: what had earlier looked like a form or shadow was probably the cord on an article of clothing.

Meanwhile, on the eve of the latest examination, another prisoner asked the Québec Ombudsman to intervene on behalf of the prisoner, who was apparently the victim of unjustified suspicion. The prisoner's grandmother also informed the Ombudsman that during this entire period, her grandson had not been able to meet with his lawyer.

In investigating this matter, the Ombudsman discovered that no account had been taken of the fact that administrative segregation could have very serious physical and psychological repercussions upon an individual. Moreover, it was evident that a number of the prisoner's fundamental rights had been infringed, in particular:

- his right not to be placed in administrative segregation for more than 72 consecutive hours, which is the maximum period allowable for this type of punishment;
- his right to be notified of his punishment in writing;
- his right to be informed that he can ask the centre's administrator to review the decision;
- the possibility of taking a shower;
- the possibility of seeing a doctor.

When informed of the situation, the administrator promised to take the necessary measures so that such an abuse would not be repeated.

During the same period, the Québec Ombudsman received similar complaints concerning two other detention centres. The administrators of these facilities considered that prolonging administrative segregation could be justified, even if such a practice went against government regulations.

The Ombudsman decided to inform the higher authorities in the Department about these infringements of regulations. In his *Special Report on Correctional Services*, the Ombudsman recommended, among other measures, that these illegal practices be curtailed, and he asked the ministère de la Sécurité publique to take firm action involving the entire personnel of detention centres. This recommendation was followed and instructions were transmitted to all employees.

In accordance with to the Action Plan Dealing with the Recommendations of the Québec Ombudsman, tabled by the minister of public security after the publication of the report, the Department decided to strike a committee composed of external and internal experts in order to highlight the relevant measures for controlling illicit substances that have been swallowed. The Ombudsman intends to pay particular attention to the results of this committee's deliberations.

Temporary leave for humanitarian reasons: the golden mean

Confronted with the perennial problem of overcrowding in detention centres, certain facilities have, in the past, considerably broadened prisoners' access to "temporary leaves for humanitarian reasons". The "practical solution" was to authorize "temporary leaves" for all inmates, even those not having served a sixth of their sentence. However, the procedure thus adopted actually contravened the pertinent law and was contrary to the very spirit of this type of special authorization. Overcrowding was not an acceptable reason for granting temporary leaves, and the practice was in the end denounced so vigorously and given such extensive media coverage that the ministère de la Sécurité publique put a stop to it once and for all.

However, the pendulum swung in the opposite direction and respect for the norm led to excessive rigidity, which in turn prompted certain prisoners in a centre to appeal to the Québec Ombudsman because they had been denied temporary leave, whereas they felt that they were entitled to it on the basis of the usual criteria (visit to their family, session with a psychologist, testing of professional skills for a job after release, etc.). The refusals were apparently the result of the minister's instructions concerning temporary humanitarian leaves and overcrowding. The Ombudsman's investigation showed that the centre in question was interpreting the minister's instructions in a very restrictive way. As a matter of fact, temporary absence for humanitarian reasons was granted only very exceptionally and solely if a refusal would cause very real harm to the individual in question.

This position contradicted the directive governing this type of leave and was also contrary to the very clear instructions given by the minister, who merely wished to remind people that temporary leaves should not be used as a solution to problems of overcrowding. Following the Ombudsman's intervention, the centre rectified the situation and agreed to review the requests that had been turned down for the aforementioned reasons.

GOVERNMENT AGENCIES

Commission administrative des régimes de retraite et d'assurance

No soliciting please

A retired public sector employee received a letter, signed by the president of the Commission administrative des régimes de retraite et d'assurances, asking her for a donation to the public sector's Comité Centraide 1997 (United Way committee).[18] Noticing that her social insurance number appeared on the return stub, which would be transmitted to Centraide if she decided to contribute, she turned to the Québec Ombudsman to denounce this disclosure of personal information, as well as the unwanted solicitation.

The Commission explained to the Québec Ombudsman that social insurance numbers were systematically used in order to identify donors, who for the most part preferred having their United Way donations deducted at source from their pensions. Because the Ombudsman also learned that the mailing of letters for contribution soliciting was done by an outside company, he expressed his concern to the Commission over the unauthorized disclosure of personal information to third parties. He asked as well that pension recipients be allowed, upon request, to remove their names from the solicitation list.

As a result of the Ombudsman's representations, the Commission administrative des régimes de retraite et d'assurances endorsed the suggestion to remove the names of those who explicitly requested it from the solicitation process. The legal services unit of the agency evaluated the entire file concerning the partnership with Centraide by examining, among other elements, the legislation covering the confidentiality of personal information. At the end of this study, the Commission administrative des régimes de retraite et d'assurances decided that the service agreement with the outside firm, the one preparing and mailing printed matter for purposes of soliciting (with all fees and expenses being assumed by Centraide) should conform to the *Act respecting access to documents held by public bodies and the protection of personal information* (section 67.2 of the R.S.Q., chapter A-2.1). The agreement specifies that the firm has the responsibility not only to respect the confidential nature of certain information but also to withhold it from Centraide. Talks are in progress with this firm to evaluate the possibility of using identification codes to locate pensioners during the fund-raising campaign, a code to which only the Commission administrative des régimes de retraite et d'assurances would have the key.

[18] The Comité Centraide co-ordinates the United Way fund-raising campaign for government employees and pensioners, as well as for some public and parapublic organizations. The committee derives its legal basis from an order-in-council.

Commission de la santé et de la sécurité du travail

The very subtle definition of the word "suitable" in the case of "suitable employment"

As provided for by law, the Commission de la santé et de la sécurité du travail assigned a "suitable" position to an injured worker. This refers to the category of employment to which an accident victim can have access given his or her new limits to performance. It should be noted that choosing one category rather than another has a direct effect on the income replacement indemnity paid to the injured party: the higher the potential earnings, the smaller the indemnity. In the case at hand, the decision rendered provided that the man could work as a security guard, with an annual salary estimated at $22,525. The worker, however, believed that he could not take on this "suitable" position, given the after-effects of his accident, and so he appealed to the Québec Ombudsman.

At the beginning of 1999, the Québec Ombudsman contacted the Commission's reassignment advisor in order to obtain a part of the worker's file. He also consulted the documents provided by the worker himself and found that the reassignment advisor had already reviewed the decision, and on the very day of the Ombudsman's intervention had notified the complainant that the "suitable" position would remain as assigned. The Québec Ombudsman then interceded with the advisor's superior, insisting on the necessity of assigning the worker in question to a position more closely in keeping with his physical capabilities, as a parking lot attendant for example.

The supervisor's response was that the worker himself had participated in the process of determining just what was a "suitable" position, and that the decision had been made with his consent. The Québec Ombudsman pointed out that the worker was practically uneducated; that while almost fifty years old, he had worked for the same company for 30 years; that he could hardly imagine what else he could possibly do, and that he therefore had very much depended on the opinion of the reassignment advisor during this process. As it happened, in the course of their discussion, the advisor had emphasized only those aspects of the security guard position that were compatible with the worker's limits to performance.

The Québec Ombudsman reiterated that the job was not appropriate given the worker's limits to performance, and thus it was not so "suitable" after all.

Finally, the Commission decided to review its decision by means of an administrative review process. The person was assigned a "suitable" position as a parking lot attendant with an annual salary of about $15,000. At the same time, the worker was entitled to receive a more advantageous income replacement indemnity (over $6,000 annually instead of approximately $1,500).

Approximation as a criterion for decision-making

In 1998, the owners of a vacuum cleaner retail and repair shop received an assessment notice from the Commission de la santé et de la sécurité du travail. The amount to be paid was $1,200, a sum that the couple judged clearly excessive. They then contacted the Québec Ombudsman, explaining what they believed was an error in the classification of their business and stating that they certainly did not have the means to pay such an amount.

The Ombudsman's first step was to verify whether the classification was indeed the appropriate one. Astonishingly enough, the business was put in the same category as a firm manufacturing and repairing large household appliances. When queried on the subject, the agency replied that the commerce in question did not really fit into any of its categories. That being the case, the choice of category clearly seemed more arbitrary and approximate than based on fact, and the commerce was being forced to pay the price. Next, the Québec Ombudsman checked the rate tables and discovered that the commerce could have been put into a category that included businesses retailing or repairing small portable household appliances, a category for which the required contribution was only about half as much as for the first. The Commission accepted this position and prepared a new assessment notice in the amount of $700.

How far back does the interest go?

In 1994, a man was injured in an accident at work. In a medical report, dated a year later, the attending physician specified that the resulting cerebral paralysis would certainly lead to a functional and aesthetic impairment. It was, however, too early to assess the permanent damage in terms of a percentage and too early to determine the amount of any indemnity.

In 1998, the Commission de la santé et de la sécurité du travail established that the worker's capacities were permanently reduced by 23% following what it considered an aggravation of his initial injury, an aggravation occurring two years after the accident. The agency informed the individual that he would receive an indemnity corresponding to this percentage, as well as interest going back to 1996. Unhappy with the decision, the worker communicated these facts to the Québec Ombudsman, feeling that he should receive interest from as far back as 1994, the year of his accident.

The Ombudsman's discussions with the Commission led to the realization that the worker's condition had not actually been aggravated in 1996. In reality, the damage had been done at the time of the accident. And since the percentage of permanent affliction could not have been established before the initial injury stabilized (this finally occurred in 1998, at the point when the individual's condition could no longer be expected to improve), the complainant should normally receive interest retroactive to the date of the accident itself. The Commission accepted the Québec Ombudsman's position and paid the interest owed to the worker.

The inspector inspected

In 1994, a pregnant worker presented her employer with a precautionary withdrawal certificate. Following this, an inspector from the Commission de la santé et de la sécurité du travail arrived at the workplace, met with the future mother and prepared a report on the dangers specified in the precautionary withdrawal certificate. Later, based on the conclusions of this report, the Commission handed down a decision according to which the worker was reassigned to a position that presented no risk to her or to her unborn child. Not satisfied with the verdict, the worker turned to the Québec Ombudsman.

The Ombudsman's investigation revealed that in her report, the CSST inspector took into account only part of the task performed by the worker: she did not take into consideration the heavier work involved in receiving and unpacking merchandise. In addition, the inspector specified that the worker performed these tasks unassisted.

In the opinion of the Québec Ombudsman, this evaluation was incomplete and led to a decision that did not take into account the real dangers of the position for both the mother and her child.

Finally, the claim was not accepted until 1998, and the worker then received the amount to which she would have been entitled during her pregnancy. The payment allowed her in particular to reimburse the employment insurance benefits that she had received at the time, since she had been forced to quit her job (given the Commission's unwavering refusal to reconsider its decision).

Respecting true confidentiality

A worker contacted the Québec Ombudsman to inform him of the disclosure of his health insurance number (which appeared on his indemnity cheques) by the Commission de la santé et de la sécurité du travail.

In conformity with the law, the Québec Ombudsman informed the Commission d'accès à l'information about the situation, considering that such information really does not belong in the hands of financial institutions. He then asked the government agency in charge of ensuring respect for confidential information to intervene with the Commission de la santé et de la sécurité du travail. He also proposed a solution: to use a reference number assigned to workers by the Commission in accordance with its own law.

The intervention of the Commission d'accès à l'information was based on these suggestions. Six months later, the Québec Ombudsman was notified that the necessary computer changes had been made to allow for the implementation of his suggestion. In the future, cheques issued to

workers will no longer infringe upon their right to maintain the confidentiality of personal information.

An incomplete form: the administration wants nothing to do with it

A young woman was the victim of an accident at work in 1993 and did not resume working until three years later. However, two days after her return to work, she was forced to go the Commission de la santé et de la sécurité du travail claiming an aggravation of her condition.

At the moment of her accident in 1993, this individual had no children. However, by the time the aggravation occurred, she had two, an important fact that she neglected to report when filling out the section concerning dependent children on a form. As a result of this omission, her income replacement indemnity remained at the rate paid to a worker without dependents. Two years later, she realized her error, and considering the larger amount that she could have received at the time of her claim, she attempted to rectify the situation. The officer in charge of processing this claim refused to review the original decision because in his view the appeal had not been lodged within the prescribed time frame.

The Québec Ombudsman, to whom the young woman turned next, considered this reply to be unreasonable. In fact, the Commission's own procedure manual explicitly offered the worker the possibility of rectifying any omission in her declaration. As specified in the same manual, the officer should have contacted the worker to obtain the missing pieces of information. Furthermore, he should have made more of an effort to establish the worker's family profile when she contacted him to inquire about the possibility of taking a vacation outside of the region in order to recover from the recent death of one of her children.

Following the Ombudsman's intervention, the situation was rectified and the worker obtained a sum of $7,500, the amount that she was entitled to receive.

Administrative review at the CSST: an ineffectual remedy

The goal of the *Act to Establish the Commission des lésions professionnelles and Amending Various Legislative Provisions* (Bill 79), adopted on June 12, 1997, was to abolish the joint review board (JRB) and create an administrative review process so as to humanize, simplify and accelerate dispute settlement. The order-in-council of March 18, 1998, designated April 1, 1998, as the date for abolishing the joint review board and replacing it with an administrative review procedure. The only transitional provision was that the joint review board complete its review of files for which hearings had already been held.

On April 1, 1998, the administrative review division inherited 21,672 files from the joint review board. Eight months later, on December 1, 1998, only 8,527 (39 percent) of these files had been

processed. During the same period, this division also received 20,360 new files from the compensation office, of which only 5,992 (29 percent) had been processed. As of December 1, 1998, there were a grand total of 27,513 files. In the eyes of the Québec Ombudsman, this situation was unacceptable and would only create difficulties for both workers and employers alike.

The administrative review division's objective of gradually reducing this backlog before December 1999 seemed to the Québec Ombudsman very difficult to achieve. He wrote to the head of the Commission on February 9, 1999, bringing to his attention the serious difficulties involved in the planning and co-ordination of the administrative review implementation procedure. He also suggested some solutions, in particular sending to the Commission des lésions professionnelles, as soon as the file is complete, any contested decision concerning which the reviewing agent is bound by the decision of the Bureau d'évaluation medicale. As well, he urged the CCST to establish a conciliation and mediation office.

On February 23, the head of the Commission pointed out to the Ombudsman that in mid February, 55.4 percent (12,011) of files originating from the joint review board and 37.4 percent (10,069) of files from the indemnities office had been processed, which led him to conclude that the targeted goal was realistic and would be reached.

On May 18, the Ombudsman informed the latter that he could not share his optimism. According to an assessment made on March 31, 1999, which took into account the new files brought under review since December 1998, the administrative review would have to process more than 20,000 files by December 1999 unless emergency measures were adopted.

In fact, even if on March 31, 1999, only 7,488 files remained from the joint review board, the number of files from the compensation office had actually increased. Between December 1, 1998, and March 31, 1999, the number of files rose from 14,368 to 17,262. In view of the output observed during this period, an estimate of 20,000 files for December 1999 did not seem unrealistic.

The Ombudsman considered that it was essential for the Commission to quickly revise its appraisal of the situation. Unless the suggested solutions were adopted, the division would have to find, as quickly as possible, other ways of eliminating the considerable backlog.

On June 29, the Ombudsman stressed to the head of the Commission that 17,901 files were awaiting review. To this number, another 6,684 files would be added from the review board.

On July 12, the latter informed the Ombudsman that he was drawing a rather positive conclusion from the available data. In his view, the productivity of the last months reflected a significant improvement in the division's processing capabilities.

On July 19, the Ombudsman notified the head of the Commission that he still did not share his optimism, despite the relative decrease in the volume of files. He informed him that he would keep a close watch over the progress of file processing initiatives until December 1999.

Thus after more than fifteen months, there are over 24,000 files awaiting processing by the administrative review procedure. And yet, this procedure was intended to accelerate the processing of contentious claims. The Québec Ombudsman will keep a close eye on the entire file.

Régie de l'assurance-maladie

Computer file mix-up: same residence, different address

Two former income security recipients stopped receiving this form of assistance a little while back. While consulting a voters' list for the fall 1998 provincial election, they were astonished to find that instead of their home address, there appeared, next to their names, the address of the Centre Travail Québec, the agency that had processed their files! The indignant pair first attempted to make the necessary corrections by contacting various organizations, but to no avail. They then turned to the Québec Ombudsman.

The Ombudsman remarked that during exchanges of address files between government departments and agencies, notably the Régie de l'assurance-maladie, there was a mix-up involving the private address file and a second file containing references to service outlets. To make a long story short, the error was reproduced on the Chief Electoral Officer's voters list, much to the chagrin of the two former recipients.

Following the Ombudsman's intervention, the necessary corrections were carried out.

The agency must pay for its mistakes and for its change of heart

Here is a case which is full of dates, but the reactions of the administration and the acknowledgement of the claimant's rights are closely linked to a certain accuracy concerning time...

A citizen received breast implants in 1975 and suffered no health problems until 1989 when she started to experience some eye troubles. Seven years later, relating this discomfort to the surgery she had undergone and to the presence of silicone, she asked her physician to remove the breast prostheses. This operation cost $2,000, and the physician contacted the Régie de l'assurance-maladie du Québec to find out whether the agency would pay for the operation. Two months later, in October 1996, the Régie replied that it would not. The patient contested this decision, and in April 1997, she lodged an appeal for a judicial review. However, the operation had already been performed shortly before her appeal was entered. During the following summer, in June 1997, the Régie handed down a new decision, stating that the procedure was indeed covered by public health insurance since in her file the physician mentioned that her body was absolutely unable to tolerate the implants and that she was suffering from various side effects. Satisfied with the new result, the citizen requested a reimbursement. No news until 1997, when she received a letter from the Régie informing her that the judicial review appeal she had previously filed had been submitted too late; it had been sent in after the prescribed six-month time limit had expired. At that point, her case was sent to the agency's legal service for comments and recommendations regarding the legal significance of her specific case. Meanwhile the individual contacted the Québec Ombudsman.

After investigation, the Ombudsman concluded that it was unreasonable for the Régie to have readopted its first decision, based on a technicality that the agency had failed to consider when analyzing the complainant's original appeal. A mistake had been made, and the Régie would just have to pay the price.

The Régie finally decided to go along with the opinion of the Québec Ombudsman, and the individual was awarded her reimbursement at long last.

Speculative evidence is not proof

A citizen went to the pharmacy to buy medication. However, the pharmacist explained that he could not fill the prescription because the man's health insurance card was no longer valid; thus the individual was no longer eligible to receive medication under the prescription drug insurance plan.

In fact, in order to be entitled to participate in the prescription drug insurance plan, one must be the holder of a valid health insurance card. In the case at hand, unbeknownst to the citizen, he was the subject of an investigation being conducted by the Régie de l'assurance-maladie du Québec. The agency suspected him of not residing in Québec for a sufficient length of time during the year to remain eligible for government coverage. The individual in question had no idea that he was under such a cloud of suspicion; nor was he aware that the use of his card had been temporarily revoked.

Later, the intervention by the Québec Ombudsman, to whom the individual had complained, resulted in the confirmation of his health care plan eligibility. Moreover, the Ombudsman concluded that the entire process of depriving an individual of eligibility based on suspicions (and even before the completion of an investigation) should have been the subject of prior debate.

The Régie informed the Ombudsman that changes would be made in the computer system, and that as of October 1, 1999, similar situations should not be repeated.

Confidentiality-of-personal-information alert!

A citizen turned to the Québec Ombudsman with concerns regarding the Programme d'exonération financière pour les services d'aide domestique (financial relief program for home care services), developed by the ministère de la Santé et des Services sociaux and administered by the Régie de l'assurance-maladie du Québec. The program was designed to create a network of home care institutions for working households and the elderly.

The complainant denounced the fact that program participants were required to hand over tax returns to the contracting institution in order to establish the amount of financial assistance for

which they were eligible. She also protested against the excessive red tape accompanying the implementation of the program.

Informed of the reasons for the complaint by the Ombudsman, the Régie admitted that it was experiencing serious operational difficulties and acknowledged that it had to review and redefine its requirements and thus bring them into line with the *Act respecting the ministère du Revenu* and the *Act respecting access to documents held by public bodies and the protection of personal information*. The Québec Ombudsman requested that changes be made to the administration of the program concerning

- the role of the contracting institution: it was playing too large a role when it took on the collection of confidential information. Its contribution should be limited to collecting information relative to the completion of a service contract. Its main role, above all, is to provide home care services for the applicant;
- access to confidential information: the institution should not have access to the applicant's social insurance or health insurance numbers. The Régie should instead assign the applicant a separate file number.

During discussions with the program directors, the Ombudsman learned of talks already in progress with the ministère du Revenu du Québec regarding access to the applicant's income tax records. A new "Financial Support Application Form" is also being prepared. This will include a section authorizing the Régie to have access to the applicant's income tax records. In addition, a second form will soon be available, which will define the terms of the service contract. According to the directors, the applicant will thus have the choice of either handing over his or her income tax records to the institution's representative or of authorizing the Régie to obtain the income-related information from the ministère du Revenu du Québec. These additions also give the applicant the choice of either filling in the first form in the presence of the institution's representative and thus allowing the latter access to personal information, or of simply completing the service contract.

The Ombudsman expressed his satisfaction with the steps that had been taken. He did point out, however, that these choices are only available if individuals are adequately informed. He thus asked that

- instructions concerning the confidentiality of personal information, such as one's social insurance number, health insurance number and information concerning income tax returns, be added to both the "Financial Support Application Form" and the "Operational Guide for Institutions";
- the possible choices be clearly identified in these documents;
- a warning be included concerning third party use of confidential information collected in conformity with the application of the program.

The Régie responded favourably to these requests.

Prescription drug insurance

Since the implementation of the prescription drug insurance plan in 1996, the Québec Ombudsman has had to intercede and make recommendations concerning certain aspects of the plan, elements which in his opinion adversely affect citizens. Modifications have been made, notably in the ceilings for deductibles and co-insurance. Thus, in response to the Ombudsman's request, onerous quarterly contributions, which sometimes had to be paid in a single payment, have been replaced by a monthly ceiling. This change was implemented in July 1977; however, many people are still being wronged by the current plan.

Even if the number of complaints to the Québec Ombudsman has decreased (100 for 1998-1999), it cannot be concluded that all problems have been resolved. The chief grounds for the remaining complaints are the following:

- the excessive cost of deductibles and co-insurance for certain low income individuals who are not recognized as such because they do not benefit from income security programs or income supplements;
- the excessive cost of premiums for group insurance when a spouse and children have to be insured and when insurance plans require the buyer to pay for packages including mandatory additional coverage;
- mandatory payment of premiums for the government plan, whereas the individual will not be eligible to receive benefits from this plan, since he or she has not taken out group insurance as required by law;
- mandatory participation in the group insurance plan of an ex-employer, in the case where the individual has retired before the age of 65 years;
- mandatory participation in the group insurance plan offered by a professional corporation, whereas the individual is practically without income.

As can be seen, serious deficiencies remain and stand in the way of the lawmaker's objective, which is to ensure reasonable and equitable access to prescription drugs for the entire population of Québec.

The evaluation report on the plan, prepared by McGill University at the request of the Department, was released on March 26, 1999. It demonstrates the negative consequences of the drug insurance plan for some, mentioning among other difficulties a decrease in the use of essential prescription drugs by income security recipients experiencing mental health problems and by senior citizens suffering from various chronic illnesses.

On June 11, 1999, the minister tabled Bill 69, which guarantees free medication for those with severe employment constraints who receive benefits through the last resort program, or are at least 60 and not more than 65 years old and have a claim booklet issued in accordance with the *Health Insurance Act*. These legislative provisions have been in force since October 1, 1999. The

bill represents a step in the right direction, but the Ombudsman still believes that more changes have to be made.

By January 1, 2000, at the latest, the minister of health and social services will report to the government on the implementation of the *Act respecting prescription drug insurance* and on the appropriateness of making amendments to it. From now until the minister's report is tabled, the Québec Ombudsman will continue to identify situations that he deems unjust for different citizen groups and bring them to the minister's attention so that the defects in the drug insurance plan can be corrected.

Régie des rentes

The lawmaker's intentions are not respected

A person's contributory period starts at the age of 18 years (or on January 1, 1966, for those who turned 18 before this date), and terminates at the end of one of the following months (whichever comes first): the month preceding the month his or her retirement pension becomes payable (in accordance with Québec legislation or an equivalent plan), or the month preceding the individual's 70th birthday or the date of his or her death.

To be eligible for certain benefits established in the *Act respecting the Québec Pension Plan*, an individual must have contributed to the plan for a minimum number of years.

As an example, for a spouse to be eligible for a survivor's pension, the deceased contributor would have had to have contributed for at least a third of the number of years of his or her total "contributory period".

Thus, if we take the case of a man who died at the age of 36 years, for his spouse to be eligible for a survivor's pension, the husband would have had to have contributed to the plan for at least 6 years, which would be a third of his contributory period ($36 - 18 = 18 \div 3 = 6$).

Such requirements ran the risk of penalizing those who left the work force to take care of their children. Hence in 1997, Québec's lawmakers decided to deduct from this contributory period all the months during which a parent received a family allowance, until the seventh birthday of the child, as long as this person's earnings did not exceed the personal exemption.

In accordance with its interpretation of this legislative provision, the Régie only deducted the years during which the contributor received a family allowance for a period of twelve months, thus unjustly penalizing a good many individuals.

Because an allowance begins one month after the month of birth, only contributors who had children during the month of December could see their contributory period reduced by seven years, since only they received a family allowance every month of that year. For all others who had children during the other months of the year, the contributory period was reduced by only six years, even if they had received a family allowance for 84 months.

For instance, a woman who received a family allowance from February 1970 to January 1977 had only six years (1971 to 1976 inclusively) deducted from her contributory period, even though she had actually received a family allowance for a period of 84 months (7 years).

Since 1977, the Régie's interpretation of section 101 has resulted in many individuals being denied the survivor or disability pensions to which they were entitled.

The intervention of the Québec Ombudsman has led to the adoption of new legislative provisions so as to resolve the problem for the future and to restore, retroactively, the losses suffered by individuals who were unjustly denied their pensions.

More than 90,000 files have been reviewed, and 247 of them have been corrected. This has led to a retroactive payment of $2,130,260, including:

15 disability pensions	$384,254
69 survivor pensions	$1,536,330
63 orphan pensions	$141,897
100 death benefits	$67,779

About three hundred more files will be reviewed between now and the end of March 2000.

Régie du bâtiment

First contractor's licence and some nasty surprises

A citizen obtained his first contractor's licence in the fall of 1997. In July of the following year, the Régie du bâtiment du Québec sent him a renewal notice specifying that the requisite documents must be produced before the end of September or else late fees would be applied. The citizen did not go to the Régie until November, at which time he paid the penalty fee of $140. The employee of the Régie accepted his payment without any further comment so the contractor assumed that the situation was in order. What a surprise to learn, a short time later, that his licence had been suspended! In disbelief, he contacted the Régie and learned that for each application like his own, the agency had a month to analyze the file and hand down a decision. The contractor is normally supposed to send the relevant documents to the Régie at least 30 days before the expiry date so as to avoid a suspension, something that our contractor learned too late. He considered himself an innocent victim of circumstances and he turned to the Québec Ombudsman for help.

The investigation showed that the renewal notice made no mention of the fact that late renewals would result in a licence suspension. Incidentally, the citizen, for whom this was a first renewal, risked losing an important contract if the Régie du bâtiment did not immediately process his file.

At the request of the Ombudsman, the Régie agreed to examine the contractor's application for renewal right away. And after handing down a favourable verdict, the agency presented him with the licence in person rather than sending it by mail so as to avoid any further delay.

Société de l'assurance automobile

Unwarranted delays: just what is the definition of "flagrant injustice"?

A citizen was a victim of a car accident in May 1979. However, it was only in November 1996 that the Société de l'assurance automobile du Québec agreed to pay him a lump-sum indemnity of $915 for the after-effects of the accident. In this regard, a note in the Société's file indicates that a medical evaluation was requested in 1981 to provide a ruling on the after-effects, but no follow-up was given to this request.

As one can see, the accident occurred fifteen years before the payment of the indemnity. However, the victim did not receive a single penny of interest despite the delay. He therefore complained to the Bureau de révision (review office) of the Société, claiming the interest which he considered himself entitled to receive. Instead, he got the following response from the agency pursuant to the Automobile Insurance Act: for there to be any interest payment, the Société's treatment would have to amount to an act of "flagrant injustice".

Consequently, the reviewing officer of the Société refused to modify the decision granting a lump-sum indemnity without interest, and he suggested that the victim contact the Service de l'indemnisation (compensation department) again so that the latter might clearly establish whether or not he would be entitled to interest payments. The compensation officer to whom the request was submitted turned it down for the same reasons, considering that the Société was not the cause of any flagrant injustice in this specific case. The victim contested this decision, but also contacted the Québec Ombudsman to inform him of the situation.

In this case, the Québec Ombudsman stressed to the Société that a delay of fifteen years certainly met the definition of "flagrant injustice" and that due to the delay the person was deprived of interest which his indemnity payment could have generated. The Société recognized the validity of this line of reasoning. The sum paid in interest to the victim in the end amounted to $4,000!

Three years after the accident, some rights remained in limbo

In 1990, a one-year-old child suffered a mouth injury in an road accident when he was in a car being driven by his mother. A few months later, the latter applied for compensation on her own behalf and mentioned on the form that her son had lost two teeth in this accident. In the section concerning the injuries sustained, she wrote, as required, her son's health insurance number. A note in the SAAQ file from May 1990 confirms that the agency was well aware of the child's injuries. However, there was a delay in settling this part of the claim, pending reception of the bill for "replacing" the lost teeth. In the months following the accident, the dentist deemed that it was in fact too soon to give a firm opinion about the consequences of the premature loss of the child's baby teeth, and that only later on could one assess the damage and the nature of any possible treatment.

In October 1997, the child's mother sent the agency a request for reimbursement of orthodontist's fees for a treatment related to the accident and to the irregular growth of her son's adult teeth. More than six months later, the Société told the mother that her request could not be processed because it was received after the deadline, that is, later than the maximum period of three years after the incident took place. The mother then sought redress through the review procedure, but the reviewing officer told her that the SAAQ decision, as conveyed in the May 1998 letter, was outside his jurisdiction. The problem was then referred to the Québec Ombudsman.

In his intervention, the latter stressed that from the beginning the Société knew of the injuries sustained by the child and that it did not intervene in any way to assist the child's mother in having her rights respected. The Société agreed with the Québec Ombudsman, recognizing that it should have followed up on the compensation request made in 1997 and reimbursed the victim for the dental treatment received.

Guilty of not having received accurate information?

A road accident victim had been receiving an income replacement indemnity since 1988. In 1994, when she was 62 years old and eligible for a retirement pension from the Régie des rentes du Québec, an officer of the Société de l'assurance automobile du Québec advised her to contact the Régie to obtain either a retirement pension or a disability pension.

It should be noted that a person in this situation is entitled to receive both an income replacement indemnity and a retirement pension, whereas a disability pension must be subtracted from the indemnity.

Not having received any information to this effect, the victim applied for a disability pension at the Régie des rentes. The application was dated May 1994 and the pension was granted in September 1994, retroactive to September 1993. Shortly thereafter, toward the end of 1994, the victim informed the Société de l'assurance automobile of her eligibility for a disability pension. The Société did not take this information into account, and the victim continued to receive the entire disability pension when this sum should have been subtracted from the income replacement indemnity. It was only two years later, following exchanges of computerized data with the Régie des rentes, that the Société noticed the overpayment.

Consequently, the Société claimed $20,000 from the person, who contested this claim using every recourse at her disposal, including the Commission des affaires sociales. The latter, by the way, had no choice but to uphold the decision of the Société, since the agency based its decision on the applicable law. However, the Commission recommended that the agency take advantage of leeway provided under the law to reduce the debt. The Société continued to claim the total sum, and the citizen appealed to the Québec Ombudsman.

The latter pointed out to the agency that not only had the citizen been deprived of pertinent information concerning the choice she had to make between the retirement pension and the disability pension, but also the Société did not take into account the information transmitted by the victim herself.

The Société was finally won over by the arguments of the Québec Ombudsman and reduced the debt by more than half.

Calculation of a death indemnity: misinterpretation of the law

In 1993, a citizen had an road accident which forced her to leave a full-time job with an annual income of $6,791. Afterwards, she received an income replacement indemnity from the Société de l'assurance automobile du Québec, and the amount was not based on her previous income, but rather on the minimum wage at the time, which was $13,422. Five years later, this person died, and the Société calculated the lump-sum death indemnity owed to her spouse to be $48,683, this being based on her actual salary rather than on the minimum wage, as established by law.

The spouse deemed that he had been wronged and explained the situation to the Québec Ombudsman, who let the Société know of his disagreement with its interpretation of the law. In his opinion, there was an error concerning the definition of the gross income which should be taken into account in calculating the death indemnity for the surviving spouse. Six months after the first intervention of the Québec Ombudsman, the Société recognized that the applicable legislation did not allow it to use an income below the minimum wage in its calculations and increased the lump-sum death indemnity owed to the spouse from $48,683 to $64 ,037 plus interest.

The Ombudsman must now ensure that the necessary adjustments are carried over to all other similar cases.

Family minibus or public transit vehicle?

A large family of two adults and seven children acquired a minibus, the only type of vehicle which could transport the whole group. During the normal purchasing procedures, however, the father encountered certain problems: the Société de l'assurance automobile du Québec notified him that the minibus was considered as a bus, and this increased the number of government requirements under the law. In fact, because of the agency's decision, the vehicle would have to undergo two annual mechanical inspections; the family would also have to pay higher registration fees and face a series of insurance-related problems, given that insurance contracts vary according to how a vehicle is used. The father therefore decided to contest the requirements of the Société and turned to the Québec Ombudsman for help.

The latter intervened with the agency to have the minibus recognized as a passenger vehicle, which it was in actual fact. The Société accepted the position of the Québec Ombudsman.

A saga... for $26

The events in question took place from April to August 1998 and, as the story shows, the dates here have a certain importance.

After having committed an infraction under the *Highway Safety Code*, a citizen neglected to pay her fine. She therefore received a notice of judgment ordering her to pay the fine as well as additional charges before May 1st. Two weeks later, the Société de l'assurance automobile de Québec sent her a notice indicating that if she failed to pay the sum due before June 5, her driver's licence would be suspended. The person paid her debt on May 22.

At the beginning of June, the citizen learned that she had to pay an additional $26 because of the warning she had received from the Société. She made the mistake of sending an uncertified cheque to the collector of the municipal court, whereas only cash payments, postal money orders or certified cheques are accepted. The fine collector returned her payment.

Afterwards, on July 22, the citizen went to the collector's office and paid her $26 debt. The evening of that same day, she was intercepted by a law enforcement officer... who seized her vehicle on the spot! The astonished driver learned that her licence had been suspended on June 5; indeed, since this date and as long as she had not paid the additional $26, the suspension of her licence remained in effect.

The following day, convinced that she was well within her rights, the citizen asked the Société to lift the seizure (to follow the requisite release procedure) since the fine and all charges had already been paid in full at the time of the seizure of her vehicle. However, this was easier said than done. Indeed, the agency would only authorize the release under certain conditions, in particular if the driver had been unaware of the suspension. According to the Société, this citizen was aware of the suspension because she received a notice to this effect in May 1998. The car owner, for her part, had been convinced that the case was closed since she had paid her debt on May 22, in other words, before the date of the suspension. In fact, she still owed $26.

Faced with the refusal of the Société to lift the seizure, the citizen asked the Québec Ombudsman to intervene on her behalf. Despite the best efforts of the latter, the agency still refused to budge. The Québec Ombudsman advised the citizen to present a motion of release from seizure before the Court of Québec.

During the hearing of the case, two weeks later, an employee of the Société quickly informed the court that the seizure was due to an administrative error and that the agency no longer opposed

the request of the citizen. The next day, the woman recovered her vehicle and the Société compensated her for all of the costs caused by the seizure.

How can one describe the attitude of the agency's administration? Pig-headedness? Because of this bureaucratic harassment, the citizen had to appeal to the Société and to the Québec Ombudsman on numerous occasions. She was twice required to go to court, and her entire family was forced to postpone its annual vacation. All of that $26.

Going once, going twice, sold!

Asking a friend for help involves enormous risks; skeptics will only have to read the following case to be convinced. A citizen asked a friend to take her vehicle to a garage because she had to stay at work. The friend agreed, without letting her know that her driver's licence had been suspended for not paying a fine. This friend was intercepted by a law enforcement officer, who noticed her irregular situation and seized the vehicle. The citizen, not knowing that she could have the seizure lifted in such circumstances, decided to wait for the expiry of the seizure period.

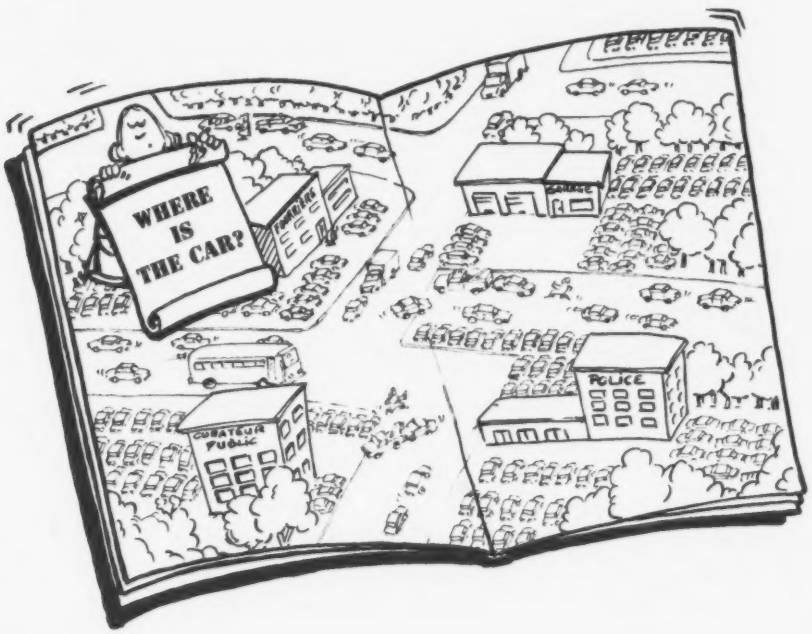
At the end of the seizure period, she went to the car pound with the amount she had to pay to recover her vehicle, about $300. The clerk who served her refused to give back her car, because there was no record of the seizure of the vehicle.

Two weeks went by during which the person took a series of steps involving the people in charge of the pound and the Société de l'assurance automobile du Québec. The result: the driver learned that the law enforcement officer had neglected to transmit a report of the seizure to the Société. The agency immediately rectified the situation.

Upon returning to the pound, the citizen was certain she would now be able to recover her car. A new surprise was awaiting her: she was told that her car was in the hands of the Public Curator and that she would have to pay $756 to recover it. The citizen, unable to pay the sum immediately, waited until she had all the necessary funds.

A few weeks later, she had the money and paid a visit to the Public Curator. The climax of the story? Her vehicle had been sold for $100! During her telephone conversations with the Public Curator, there was never any mention of such a sale.

With her patience wearing very thin, the owner of the car (who no longer had a car) turned to the Québec Ombudsman. The latter intervened, first making sure that the entire debt was eliminated given the law enforcement officer's error, the pound clerks' carelessness and the Public Curator's attitude. As the investigation demonstrated that the vehicle was sold illegally, that is, before the expiry of the period established by law, the Québec Ombudsman also made sure that the citizen was compensated for the loss of her car.



Misplaced zeal

The Société de l'assurance automobile du Québec notified a citizen that his driver's licence was suspended, based on a medical report. However, the man maintained that he had not even seen a doctor recently.

Let's go back in time for just a moment. Shortly before he received his suspension notice, the citizen's physical capacity was evaluated by an occupational therapist upon the suggestion of a social worker from a local community services centre because he had experienced pain in his shoulders and back while putting his wife's wheelchair in the trunk of his vehicle. The consultant whom he met on this occasion, a graduate in occupational therapy, suggested that he install a motorized lever for wheelchairs in the trunk of his car. However, this equipment was very costly, and the citizen was over 70 years old. With the idea of sparing him such an expense in case he lost his licence soon afterwards because of his age, the consultant gave the citizen a driving test. During the test, the consultant deemed that the citizen had acquired unsafe driving habits over time, and he informed the driver that he would recommend that the Société de l'assurance automobile suspend his licence. Hence the notice of the suspended driver's licence, a decision which the citizen contested by contacting the Société. The SAAQ suggested that he undergo a medical examination in order to demonstrate his ability to drive, and he complied. A neurologist subsequently sent a medical report to the Société confirming that the citizen was in good health and that he was capable of driving his car safely.

The man turned to the Québec Ombudsman to understand what had happened.

The investigation ascertained that only a member of one of the professional orders listed in the pertinent legislation was authorized to prepare a report for the Société de l'assurance automobile du Québec concerning the health of a person deemed unfit to drive. Since the consultant was not a member of his professional order, the Société did not have the legal authorization to use his evaluation in order to impose a suspension. The Québec Ombudsman therefore asked the agency to revoke its decision and, more generally, to respect the legal provisions by only considering reports submitted by professionals authorized to act as experts.

During this same period, the Ombudsman established a comprehensive file in order to analyze the validity of other reports of unfit driving which the same occupational therapist had signed. To be continued.

A fax takes one year to reach its destination

The day after his car was seized, a citizen went to a SAAQ service centre, where he filed an application for vehicle release from seizure. The citizen was assured that the document would be sent immediately by fax to the office in charge in Quebec City. Shortly thereafter, the same application was once again faxed to the same people because the latter claimed to have received nothing. The document still did not reach its destination.

Afterwards, the citizen approached a certain number of officials to try to clear up the matter and he was invariably informed that the release application in question had never been filed.

Since no decision was ever rendered, the citizen ended up claiming from the Société a reimbursement for the various costs that he had been forced to pay to finally recover his car upon the expiry of the seizure period. His claim was rejected. The driver therefore appealed to the Québec Ombudsman for help.

The latter contacted the people with whom the owner of the vehicle had communicated during his endeavours. The investigation revealed that the original release application was still at the service centre. The Québec Ombudsman therefore asked the Société de l'assurance automobile to process the citizen's application as if it had been made one year earlier. Because one year had indeed gone by. The agency agreed to reimburse the citizen for the cost of the seizure, since the release would have been granted had the request been processed without delay.

Blind seizure

While driving his car, a citizen was intercepted by a police officer, who informed him that his licence was suspended because he had not paid a fine and, for this reason, his car was now being

seized. The astonished driver insisted to the police officer that he had paid the fine and that he even had proof of the payment dating from the preceding week. There was nothing to be done; the car was indeed seized.

The driver, convinced of being right, asked the Société de l'assurance automobile du Québec to lift the seizure. The latter refused, claiming that according to its files, the payment had been made after the deadline had expired. The man turned to the Québec Ombudsman for assistance.

In fact, the clerk of the court that had imposed the fine did not notify the Société that the citizen had paid what he owed before the deadline, that is, two days before the suspension of the driver's licence came into effect. Since the fine collector sent in data on fine payments only once a week, on Fridays, the Société had been informed only one week later and had confused the date of reception of this information with the actual date of payment.

During the Québec Ombudsman's investigation, the court clerk was easily able to corroborate the citizen's version of the story. The Société could have rectified the situation simply by checking with the clerk or even consulting a transcriber. The Ombudsman therefore intervened so that the successive errors of the clerk (who did not transmit the information), and of the employee of the Société (whose blunders were very costly and led to all sorts of irritating red tape), were quickly rectified. The Québec Ombudsman also ensured that the citizen would not have to pay the cost of the seizure nor have to reimburse other costs related to the incident.

An incomplete pamphlet can lead to debts

A pamphlet from Communication-Québec contained incomplete information supplied by the SAAQ

The pamphlet entitled "Change of address: steps in notifying government services", published by Communication-Québec, contained incomplete information concerning a change of address and the co-ownership of a vehicle. The brochure indicated that a single notice was sufficient to have an address changed on all documents issued in the name of a given individual by the Société de l'assurance automobile du Québec (with the exception of those concerning the indemnity for automobile accident victims). However, this was not the case for a vehicle belonging to two people. In fact, even if they were married, each of the co-owners had to file for a change of address and mention the other owner of the vehicle when they did so; otherwise the vehicle registration of the other owner would indicate the former address.

At the time, the Société de l'assurance automobile du Québec was unable to establish any connection between a private individual holding a driver's licence and the registration of a vehicle under co-ownership. The Société considered the vehicle to be registered in the name of a company bearing a special number. As mentioned in the Québec Ombudsman's Annual Report of 1997-1998, the sending of the registration renewal notice to an old address could have

regrettable consequences. If citizens neglect to pay the vehicle registration fees and are intercepted by a police officer, it will cost them dearly in fines and other charges. The Ombudsman requested that the pamphlet be modified so as to properly inform citizens. The Société followed up on the Ombudsman's request.

An act of seizure

The seizure of a road vehicle driven by a person without a valid licence

The necessity for an across-the-board intervention became apparent a few months after the third and last part of *An Act to amend the Highway Safety Code and other legislative provisions* came into effect on December 1, 1997.

Even though the Québec Ombudsman has succeeded in settling unjust situations on a case-by-case basis, he has had to repeat the same steps and face the same obstacles over and over again. A comprehensive analysis of the situation has been carried out, and the report summarized below should be tabled in the very near future.

Since December 1, 1997, sections 209.1 and 209.2 of the Highway Safety Code have stipulated that any law enforcement officer who has reasonable grounds to believe that a person is driving a road vehicle without holding a valid driver's licence can proceed on the spot, at the vehicle owner's expense and in the name of the SAAQ, to seize the vehicle and impound it for a period of 30 days. The main reasons for which a driver may no longer hold a licence are: the licence is missing, the licence has been suspended for non-payment of a fine, or the licence has been revoked for impaired driving or because the driver has accumulated too many demerit points.

After impounding a road vehicle, the police officer must draw up a report of the seizure and give a copy to the driver of the vehicle or to the owner, if that person is present. Moreover, the officer must send a copy to the pound custodian and to the SAAQ (sections 209.3 to 209.5, HSC).

Normally, the owner cannot recover his or her seized vehicle before the end of the 30-day impoundment period and only after having paid the cost of the seizure, which is about $320 (sections 209.1, 209.2, 209.9, HSC). He or she can however obtain a release from seizure by contacting the SAAQ or by presenting a motion to the Court of Québec for the following reasons:

- the driver was unaware of the fact that he or she was under a penalty;
- the owner of the vehicle was unaware of the fact that the person to whom he or she had lent the car was under a penalty or did not hold a licence in a category appropriate to the driving of the vehicle;
- the offending driver had taken possession of the vehicle without its owner's consent.

In the case of a release, the owner must pay all the charges for the seizure (towing and impounding charges) before recovering the vehicle (sections 209.11 and 209.15, HSC).

If the owner of the vehicle cannot pay the seizure charges by the end of the 30-day period or neglects to recover the vehicle, the latter is then given over, five days later, to the provisional administration of the Public Curator. The Public Curator has the mandate to sell the vehicle in order to cover the seizure, impounding and sales charges (section 209.17 and following, HSC). The cost of the operation quickly reaches $800 to $1,000, whereas the vehicles, in the vast majority of cases, are sold for $100 or less.

The Québec Ombudsman intervened within the framework of Bill 58, *An Act to amend the Highway Safety Code and other legislative provisions*, in an attempt to have certain of the law's harsher effects toned down.

To this end, the Québec Ombudsman suggested in particular that a vehicle not be automatically seized on the sole grounds that it is being driven by a third party not having a valid driver's licence. He also suggested that it be made possible to obtain an administrative release from seizure as soon as the citizen rectifies the situation which led to the suspension of the driver's licence in the first place.

A legislative amendment whose time had come

Since 1989, section 50 of the *Automobile Insurance Act* has stipulated that a victim holding full-time or part-time employment at the time of an accident continues to be entitled to an income replacement indemnity even when he or she is once again able to work, if the person lost his or her job because of the accident. This indemnity continues to be paid during one of the following periods:

1. 30 days, if the victim's disability period lasted at least 90 days but not more than 180 days;
2. 90 days, if it lasted more than 180 days but not more than one year;
3. 180 days, if it lasted more than one year but not more than two years;
4. one year, if it lasted more than two years.

Moreover, section 49 of the law stipulates that the income replacement indemnity intended to compensate victims during their disability period should normally stop being paid as of the date when they are capable of returning to work.

Up until January 1, 1994, the Société had stopped paying the income replacement indemnity as of the date of the medical examination when the victim was deemed capable of returning to work. If this individual lost his or her job because of the accident, the Société extended the

payment period of the income replacement indemnity, starting from the latter date and based on the periods established in section 50.

However, on December 13, 1993, the *Automobile Insurance Act* was amended once again, in particular with the adopting of section 49.1 which, since January 1, 1994, has obliged the Société to continue paying the income replacement indemnity owed to a victim until the date of the doctor's decision concerning the victim's capacity to work, rather than until the date of the medical examination itself. On the other hand, section 49.1 also specifies that this norm does not apply when the victim is entitled, on the date of the examination, to the income replacement indemnity in accordance with section 50.

According to section 50, the payment period of the supplementary income replacement indemnity for a victim who lost his or her job because of the accident in question is calculated starting from the date of the medical examination when the person is judged capable of returning to work and not from the date of the Société's decision concerning his or her capacity to work. In actual fact, since January 1, 1994, this has served to lessen the financial benefit which the lawmaker wanted to give the victim who lost his or her job because of an accident, as compared to the person for whom the accident did not lead to a loss of employment.

Here is an example: a person with a full-time job was in a road accident on February 1, 1999. On May 15 of the same year, he was examined at the request of the Société by an expert who, in the course of the examination, deemed him capable of returning to work. A decision to this effect was rendered by the Société on June 15, 1999. The person was therefore entitled to receive his income replacement indemnity until June 15, 1999.

If this very same person had lost his job because of the accident, he would have been entitled, under section 50, to an extension of his income replacement indemnity payment for another 30 days since his disability period lasted more than 90 days but not more than 180 days. However, since the supplementary income replacement indemnity period would have begun on the date of the medical examination when he was deemed capable of returning to work, that is, on May 15, he would have been entitled to an income replacement indemnity only until June 15, 1999, just as in the first case, where he did not actually lose his job.

The Québec Ombudsman intervened with the Société, suggesting that section 50 be amended to produce the effect desired by the lawmakers back in 1989.

The Société therefore included in Bill 24, tabled in the spring of 1999, a section which rectified the situation so that accident victims are now entitled to receive the income replacement indemnity under section 50 of the *Automobile Insurance Act* as of the date of the Société's decision concerning their capacity to work.

Providing a social insurance number (SIN)

Since 1996, the Société de l'assurance automobile du Québec has required road accident victims receiving personal assistance at home to provide the social insurance number of the people helping them; this has been a condition for the reimbursement of any sums paid by the victims.

The Québec Ombudsman asked the opinion of the Commission d'accès à l'information in this regard. In its decision rendered in May 1999, the Commission ruled that the Société did not need to ask for the social insurance number of the people who provided services at victims' homes in order to apply its own regulations, in other words, to reimburse victims for costs they may have incurred.

The Québec Ombudsman therefore contacted the head of the Société to ensure that the SAAQ would comply with the decision.

In July 1999, the SAAQ president informed the Québec Ombudsman of the measures which he intended to take in order to comply with the aforementioned notice. In particular, this involves modifying the letters and forms designed to obtain the social insurance number, as well as notifying all concerned personnel of the Commission's decision.

Study on the operations of the SAAQ Bureau des plaintes (complaints bureau)

In August 1996, the SAAQ established, under the authority of its chief executive officer, a complaint's bureau intended to be accessible to all of its clients. The Québec Ombudsman has decided to look at whether or not this office is operating according to the characteristics required of such a conflict-resolution mechanism.

Société d'habitation

A breakdown in communication!

The Société d'habitation's Programme d'adaptation de domicile (home adaptation program) subsidizes owners of residential buildings for work carried out to make their buildings more accessible to handicapped people given their limits to performance. A citizen who was dissatisfied with the way her file had been processed appealed to the Québec Ombudsman.

The Ombudsman quickly realized that relations between the parties were strained. The plans that had been presented did not meet the citizen's expectations. She therefore repeatedly asked for modifications, thus obliging the agency to start all over again. Moreover, she expressed numerous criticisms and sent written complaints to the head of the Société, and even adopted an offensive attitude toward the personnel.

The Ombudsman's task was therefore to re-establish communication between the parties. He suggested that the Société meet the citizen at her home in the presence of a representative from his office. In the end, the meeting was productive, with each party able to explain its point of view calmly.

New plans were produced and the work was quickly completed.

Administrative convenience to the detriment of the prime mission of an assistance program

In the fall of 1997, in accordance with the Programme d'adaptation de domicile, the Société d'habitation du Québec issued a financial assistance certificate to a citizen who wished to renovate his house so as to adapt it to the limits to performance of his handicapped daughter. Six months later, the citizen realized that the occupational therapist from the local community services centre, who had made recommendations concerning renovations and signed the assistance certificate, had said nothing about the fence around the home. However, the fence also had to be modified in order to facilitate the movements of his daughter. Therefore, the father asked the occupational therapist to file an additional report with the Société, mentioning these renovations in it. The agency refused to add the new recommendation to the occupational therapist's report, since the assistance certificate had already been issued. The father was not satisfied with the decision and complained to the Québec Ombudsman.

The investigation revealed that in order to save time and money, the Société, with very few exceptions, did not reopen a file once a certificate had been issued.

The Ombudsman denounced this bureaucratic attitude which, in his opinion, was incompatible with respect for citizens' rights. Moreover, there was no regulation to back up this practice: the

renovations recommended by the occupational therapist were, given their purpose, covered by the program.

The agency finally admitted that the Ombudsman was right.

A simple explanation to avoid exclusion

During the summer of 1993, a citizen applied for low-rental housing at the Office municipal d'habitation de Montréal, which is the agency administering that type of assistance in conjunction with the Société d'habitation du Québec. At the end of the season, an agent from the Office went to the woman's home in order to inform her about the availability of this type of housing and the way it was allocated, as well as to have her sign the registration form for the waiting list. On that occasion, the agent provided her with a list of addresses of dwellings in the neighbourhood where she could live and asked her to indicate three choices. The citizen informed him of her preferences based on the proximity of various services, since she didn't have a car. In September, the selection committee formally registered her on the waiting list.

Almost five years went by before the citizen was offered a housing unit. The unit in question was not one of her original choices and she turned it down. She later learned that in accordance with the regulation, this refusal meant that she was excluded from the eligibility list for a year. The citizen then attempted to explain why she had felt compelled to turn down the offer. However, since there was no longer any trace of her original choices (going back to 1993), the Office decided to apply the exclusion rule. Finally, the citizen decided to turn to the Québec Ombudsman, who met with representatives from the Office and the Société d'habitation du Québec in order to explain the reasons for the citizen's refusal. On the recommendation of the Société and of the Québec Ombudsman, the Office agreed to re-enter her name on the eligibility list for the three addresses that she had originally chosen.

PROMOTIONAL ACTIVITIES

Salon des Aînés de Québec

During the International Year of the Elderly, the Québec Ombudsman took part in the **Salon des Aînés de Québec**, from May 13 to 16, 1999, at the Galeries de la Capitale. This exhibition, which is twinned with the Festival of Elderly People in China, as well as having ties with senior citizens groups throughout the world, enjoys a high degree of international visibility. It draws approximately 60,000 visitors every year. Since the experience was highly rewarding, the Québec Ombudsman intends to repeat this public relations and promotional activity in the years to come.

CONTRIBUTION OF THE QUÉBEC OMBUDSMAN TO THE INTERNATIONAL DEVELOPMENT OF THE CONSTITUTIONAL STATE

The Québec Ombudsman is pursuing his efforts to develop the institution of ombudsman throughout the world. He thus contributes to the promotion of democratic values and to developing respect for human rights.

During the last few years, the Québec Ombudsman has been entrusted with key responsibilities by his counterparts both in Canada and abroad. Since 1998, he has been chair of the Association of Ombudsmen and Mediators from French-Speaking Countries, which brings together ombudsmen from the French-speaking world; since 1996, he has been secretary of the International Ombudsman Institute (IOI), a world organization of ombudsmen, and since 1998, he has been vice-chair of the Canadian Ombudsman Association (COA), founded the same year.

Activities of the Québec Ombudsman on behalf of the Association of Ombudsmen and Mediators from French-Speaking Countries

The second conference of the *Association of Ombudsmen and Mediators from French-Speaking Countries* was held at Nouakchott in Mauritania, from May 19 to 21, 1998. On that occasion, the Québec Ombudsman was accompanied by his general manager of investigations, his international issues coordinator and his external affairs advisor.

At the conference, the permanent *Association of Ombudsmen and Mediators from French-Speaking Countries* was officially established, in accordance with a motion passed during the first meeting in Quebec City (Québec, Canada) in June 1997. The French-speaking ombudsmen and mediators approved the draft statutes of the association, prepared by the Québec Ombudsman. The objective of the Association is to foster cooperation among the various ombudsmen's offices and to promote the office of ombudsman among the states and governments in French-speaking areas.

During the conference, the Québec Ombudsman gave a speech. He talked about cooperation and painted a portrait of the institution of ombudsman throughout the world. In addition, he remarked that the French-speaking world includes 52 states or governments and that only about fifteen of them have an ombudsman, whereas there are 321 ombudsmen world-wide.

Also during the conference, the Québec Ombudsman was unanimously elected chair of the association. The other officers of the board of directors are: General Tiémoko Marc Garango, a mediator from Burkina Faso, vice-chair; Mr. Bernard Stasi, a mediator from France, secretary general; and Mr. Seydou Madani Sy, a mediator from the Republic of Senegal, treasurer.

The Association intends in particular to

- be open to all countries of the French-speaking world and to promote the strengthening or the development of the institution of ombudsman in these countries;

- ensure that the independence of the ombudsman's office is respected;
- be active in the defence and promotion of human rights and democracy;
- be professional, independent and democratic; and to seek international recognition.

The Association has two offices, one in Quebec City and the other in Paris.

Meeting of the officers of the board of directors of the *Association of Ombudsmen and Mediators from French-Speaking Countries*

The Québec Ombudsman took part in the first meeting of the officers of the board of directors of the *Association of Ombudsmen and Mediators from French-Speaking Countries,* held on September 26, 1998, at Epernay in France. During this meeting, the officers attended to the administrative monitoring of the Association and prepared for the next meeting of the board of directors.

Meeting of the board of directors of the *Association of Ombudsmen and Mediators from French-Speaking Countries*

From February 2 to 5, 1999, the Québec Ombudsman and his external affairs advisor took part in a meeting of the board of directors of the *Association of Ombudsmen and Mediators from French-Speaking Countries* in Ouagadougou, Burkina Faso. They also participated in laying the groundwork for the association's conference, which took place in that country in November 1999.

Training seminar in Bulgaria

As chair of the *Association of Ombudsmen and Mediators from French-Speaking Countries,* the Québec Ombudsman took part in a regional seminar for exchanging opinions concerning "Mediation and the Constitutional State" which took place in Sofia, Bulgaria, from September 29 until October 2, 1998. This seminar, organized by the Agence de la Francophonie, was one of the training initiatives of the developmental program for an "Espace de liberté, de démocratie et de développement" ("a space for freedom, democracy and development"). The seminar was designed to provide practical training in how to establish the institution of mediator.

The Québec Ombudsman accepted the kind invitation of the Agence de la Francophonie to address the participants, sharing his thoughts about "the creation and operations of the office of the Québec Ombudsman". He also took part in various seminar activities and led a number of discussions.

Activities of the Québec Ombudsman on behalf of the *International Ombudsman Institute*

Meetings of the secretariat of the *International Ombudsman Institute*

From April 15 to 19, 1998, the Québec Ombudsman, who is the secretary of the *International Ombudsman Institute,* held a meeting of the personnel of the secretariat at the headquarters of the International Ombudsman Institute in Edmonton, Alberta. This meeting resulted in the restructuring of the secretariat and a better distribution of responsibilities between the Quebec City and Edmonton offices.

A second meeting of the personnel of the secretariat of the *International Ombudsman Institute* was held in Quebec City (Québec, Canada), on July 6 and 7, 1998. The purpose of the meeting was to prepare for the next annual meeting of the officers of the board of directors of the International Ombudsman Institute in Pakistan.

Meeting of the board of directors of the *International Ombudsman Institute*

The board of directors of the *International Ombudsman Institute* held its annual meeting in Islamabad, Pakistan, from October 26 to 29, 1998. Dr. Marten Oosting, the Dutch ombudsman, officially stepped down as chair, a position which he had held for eight years. Dr. Oosting was named honorary member for life of the International Ombudsman Institute by the board of directors, who underscored his contribution, beginning in 1996, to the development of the concept of ombudsman throughout the world and to the reform of the Institute's organization.

The board of directors also elected Dr. Jorge Luis Maiorano, "Defensor del Pueblo de la Nación de Argentina", to the position of chair; Sir Brian Elwood, the national ombudsman of New Zealand, was elected vice-chair, and Mr. Lewis Klar, Dean of the Faculty of Law of the University of Alberta, was chosen treasurer. The Québec Ombudsman was once again named secretary of the *International Ombudsman Institute.* The external affairs advisor and the international issues coordinator for the office of the Québec Ombudsman also took part in this meeting.

3rd conference of the Asian Ombudsman Association

The 3rd conference of the Asian Ombudsman Association was held in Macao, China, from May 3 to 8, 1998. The theme of the gathering was "the encompassing role of ombudsmen in today's societies". The Québec Ombudsman was graciously invited to take part in this conference, during which he delivered an address concerning the development of the role of the ombudsman.

Conference of the *Latin-American Ombudsman Federation*

As secretary of the *International Ombudsman Institute*, the Québec Ombudsman took part in the 3rd annual conference of the Latin-American Ombudsman Federation, held in Lima, Peru from September 6 to 8, 1998.

Activities of the Québec Ombudsman on behalf of the *Canadian Ombudsman Association* (COA)

Creation of the *Canadian Ombudsman Association*

The theme of the conference of parliamentary ombudsmen of Canada, held in Yellowknife (Northwest Territories) from June 18 to 21, 1998, was "fairness and good governance". The Québec Ombudsman delivered a short speech on the challenges facing the ombudsman. He was accompanied by his director general of investigations, as well as two delegate from the Ombudsman's office.

The parliamentary ombudsmen established a national association of ombudsmen, called the *Canadian Ombudsman Association/Association des Ombudsmans du Canada*.

The objective of this association is to promote the naming of independent legislative ombudsmen on the federal, provincial, territorial and local levels; it also aims to strengthen ombudsmen's offices throughout Canada and to promote collaboration among ombudsmen's agencies on both the regional and international levels for the advancement of justice, the principles of good management, and, in particular, respect for human rights.

Conference participants agreed to ask the government and parliament of Canada to create the office of federal ombudsman with far-reaching jurisdiction.

The board of directors of the association was elected. Ms. Roberta Jamieson, the Ontario Ombudsman, was elected chair; Mr. Daniel Jacoby, the Québec Ombudsman, Ms. Barbara Tomkins, the Saskatchewan Ombudsman, and Ms. Dulcie McCallum, the British Columbia Ombudsman, were elected vice-chairs; Mr. Douglas Ruck, the Nova Scotia Ombudsman, was elected secretary, and Ms. Ellen King, the New Brunswick Ombudsman, treasurer.

Other activities

Mission of the delegates of the Constitutional Court of the Republic of Benin

On April 24, 1998, the Québec Ombudsman received a visit in Quebec City from delegates of the Constitutional Court of the Republic of Benin. The purpose of the mission, organized under

the auspices of the Canadian International Development Agency (CIDA), was to enable four Beninese judges, including the chief justice of the court, to become familiar with the structure and operations of the Canadian judicial system, on both the legal and administrative levels, in particular in the constitutional area and as concerns respect for human rights and democratic guarantees. The general manager of investigations and the director of legal affairs and research for the office of the Québec Ombudsman also took part in this meeting.

Seminar held in Warsaw, Poland

The general manager of investigations travelled to Warsaw, Poland, to represent the Québec Ombudsman at a seminar entitled "Human Dimension Seminar on the Ombudsman and National Human Rights Protection Institutions", organized jointly by the Polish Ombudsman, the Council of Europe and the United Nations.

During this seminar, held from May 25 to 28, 1998, various categories of ombudsmen and of human rights protection institutions were examined. Discussions also focused on relations between these institutions and public authorities.

Conference of the *United States Ombudsman's Association* (USOA)

The general manager of investigations represented the Québec Ombudsman at the annual conference of the *United States Ombudsman's Association*, held in Detroit from September 9 to 13, 1998. The theme of the conference was "the ombudsman ... a bridge to the future".

1st Symposium of Ombudsmen and People in Charge of Processing Complaints in the Québec Public Sector

To highlight the 50th anniversary of the *Universal Declaration of Human Rights*, the Québec Ombudsman organized the 1st Symposium of Ombudsmen and People in Charge of Processing Complaints in the Québec Public Sector, on December 3, 1998, in the city of Montréal. Representatives from federal and Québec departments and agencies, from some municipalities and from the hospital and university sectors took part in this event.

Entitled "What is our reason for being?", this symposium provided an opportunity for the ombudsmen and people in charge of processing complaints to think about their mandate, to discuss certain aspects of their work and to exchange opinions concerning the importance of the complaints presented to them by petitioners. The objective of this meeting was to create a synergy among all the participants, who must often carry out this difficult and exacting work without any sort of assistance.

Mission to Cotonou, Benin

From February 6 to 11, 1999, the Québec Ombudsman was graciously invited by the ministère des Relations internationales to be part of a mission entitled "Integrated Program of Support for Democracy and Human Rights".

The various representatives of government departments and agencies explained their respective mandates. The Québec Ombudsman offered his support for the future development of the institution of ombudsman in Benin. His external affairs advisor also took part in this meeting.

Visit from Mali's former minister of justice

On June 10, 1999, at the Quebec City (Québec, Canada) office, the general manager of investigations met with Hamidon Diabaté, Mali's former minister of justice.

Visit from three Haitian students

On June 22, 1999, at the Quebec City (Québec, Canada) office, the general manager of investigations met with three Haitian students, winners of a local contest entitled "Sénateurs en herbe" (senators of the future).

Visit from the president of the Superior Court of Burkina Faso

On June 23, 1999, at the Quebec City (Québec, Canada) office, the general manager of investigations met with Sambo Antoine Komy, the president of the Superior Court of Burkina Faso.

Wider distribution of the Annual Report and the Social Pact

The Québec Ombudsman's Annual Report is published in French and in English, and in addition to its distribution in Québec and the rest of Canada, is provided to ombudsmen, libraries and associations around the world.

The *Social Pact*, proposed by the Québec Ombudsman to improve relations between the government administration and citizens, is available in four languages: French English, Spanish and Thai.

The Association des ombudsmans et médiateurs de la Francophonie (AOMF), the International Ombudsman Institute (IOI) and the Canadian Ombudsman Association (COA) can be reached at the following addresses:

ASSOCIATION DES OMBUDSMANS ET MÉDIATEURS DE LA FRANCOPHONIE

Médiateur de la République
53, avenue d'Iéna
75116 Paris, France

Phone: 33 1 45 02 7272
Fax: 33 1 45 00 4791
E-mail: aomf@médiateur-de-la-république.fr

Protecteur du citoyen (The Québec Ombudsman)
525, boul. René-Lévesque Est
Bureau 1.25
Québec, Québec, Canada G1R 5Y4

Phone: (418) 644-6565
Fax: (418) 643-8759
E-mail: protecteur.citoyen@pc.gouv.qc.ca
Web site: www.ombuds.gouv.qc.ca

INTERNATIONAL OMBUDSMAN INSTITUTE

Suite 205 D, Weir Library
Faculty of Law, University of Alberta
Edmonton, Alberta, Canada T6G 2H5

Phone: (780) 492 3196
Fax: (780) 492 4924
E-mail: dcallan@law.ualberta.ca
lreif@law.ualberta.ca
Web site: www.law.ualberta.ca

Secretary of the IOI
525, boul. René-Lévesque
Bureau 1.25
Québec,Québec, Canada G1R 5Y4

Phone: (418) 644-6565
Fax: (418) 643-8759
E-mail: protecteur.citoyen@pc.gouv.qc.ca
Web site: www.ombuds.gouv.qc.ca

CANADIAN OMBUDSMAN ASSOCIATION

The Québec Ombudsman
525, boul. René-Lévesque
Bureau 1.25
Québec, Québec, Canada G1R 5Y4

Phone: (418) 644-6565
Fax: (418) 643-8759
E-mail: protecteur.citoyen@pc.gouv.qc.ca
Web site: www.ombuds.gouv.qc.ca

AOC/COA
c/o the Ontario Commissioner
of the Environment
1075 Bay Street, Suite 605
Toronto, Ontario, Canada M5S 2B1

ADMINISTRATIVE DATA

The Budget of the Québec Ombudsman

Comparative Expenditure Statement for the 1998 and 1999 Fiscal Years Ended March 31

	1997-1998	1998-1999
Staff		
Regular and temporary employees	3,735,631	3,851,819
Employer's contributions	367,797	371,827
Pensions for former ombudsmen and assistants	72,050	72,050
Total	**4,175,478**	**4,295,946**
Operations		
Transportation and communications	390,008	374,726
Professional and administrative services	163,266	140,961
Maintenance and repairs	86,445	15,128
Rent and rental fees	530,620	568,001
Goods and supplies	72,765	79,205
Material and equipment	45,759	80,643
Other expenditures	4,045	4,549
Total	**1,292,908**	**1,263,213**
Capitalization		
Material and equipment	62,909	45,188
Total	**62,909**	**45,188**
Grand total	**5,531,295**	**5,604,347**

Québec Ombudsman Staff		
	1997-1998	**1998-1999**
Special appointments	2	2
Senior managers	4	5
Middle managers	8	10
Professionals	30	27
Technicians	15	17
Support staff	18	17
Casual employees – full-time	4	4
Casual employees – part-time	0	0
Total employees/year	**81**	**82**

Ombudsman staff during the 1998-1999 fiscal year

ALARIE, Pierre
ASSAYAG, Lydya
AUGER, Jacques L.
BEAUPRÉ, Claire
BÉDARD, Jean-Pierre
BÉGIN, Marcel
BÉLANGER, Claude
BLACKBURN, France
BOLDUC, Yves M.
BOUCHARD, Dominique
BOULANGER, Annie
BOULIANNE, Josée
BOUTIN, Andrée
BUSSIÈRE, Jo-Anne
CAILLOUX, Mariette
CHASSÉ, Lyne
CLÉMENT, Sylvie
COUTURE, Georgette
DAGUERRE, André
DESCHÊNES, Lyne
DESJARDINS, Johanne C.
DUBUC Hickey, Diane
DUFOUR, Francine
DUGUAY, Suzanne
FALARDEAU, Louise
FOURNIER, Berthe
GAGNON, Lucie
GAGNON, Suzanne
GAUGUIN, Christine
GENDRON, Claire
GENEST, Brigitte
GERVAIS, Pierre-Paul
GOSSELIN, Dorys
GUAY, Robert
JACOBY, Daniel
LABELLE, Denise
LABERGE, Serge
LABONTÉ, Michel
LALIBERTÉ, Martine
LAMY, Micheline
LANGLOIS, Denis
LANGLOIS, Claire
LAQUERRE, Nathalie
LAROUCHE, Francine
LAROUCHE, Francyne
LAVOIE, Lucie
LESSARD, Michèle
LEVAC, Lucie
LEVASSEUR, Gaétan
LIRETTE, Marlène
LYNCH, Micheline
MACDONALD, Guy
MAYER, Lise
MCNICOLL, Micheline
MEUNIER, Jacques
MORIN, Pierre
MORISSETTE, Carmen
NADEAU, Lorraine
NORMAND, Margaret
NUNEZ, Egidio
OSTIGUY, Manon
PAGÉ, Guy
PAQUETTE, Louise
PÉLOQUIN, Marie-José
PICARD, Suzanne
PICHÉ, Sonia
PILON, Diane
PLANTE, Patrick
POULIN, Lucie
PRÉVOST, France
RACETTE, Anne-Marie
RIOUX, Sophie
ROBARDET, Patrick
ROBITAILLE, Manon
ROUSSEAU, Fernande
ROUSSEAU C., Madeleine
ROUX, Hélène
SAINT-HILAIRE, Gilles
SAMSON, Daniel
SASSEVILLE, André
SÉVIGNY, Monique
SINCLAIR, Gaétane
SWEENEY, Linda
SZIGETI Hudon, Frances
TALBOT, Suzanne
TEIXEIRA, Armenia
TREMBLAY, Mona
TURCOTTE, Jonathan
TURCOTTE, Sylvie
VERDY, Alexandre
WENTSER, Georges

Application of the *Act respecting Non-Smokers* in certain public places

During the 1998-1999 fiscal year, the Quebec Ombudsman ensured application of the *Act respecting Non-Smokers*. There were no complaints made and no infraction notices were issued.

Statistics

General Explanations

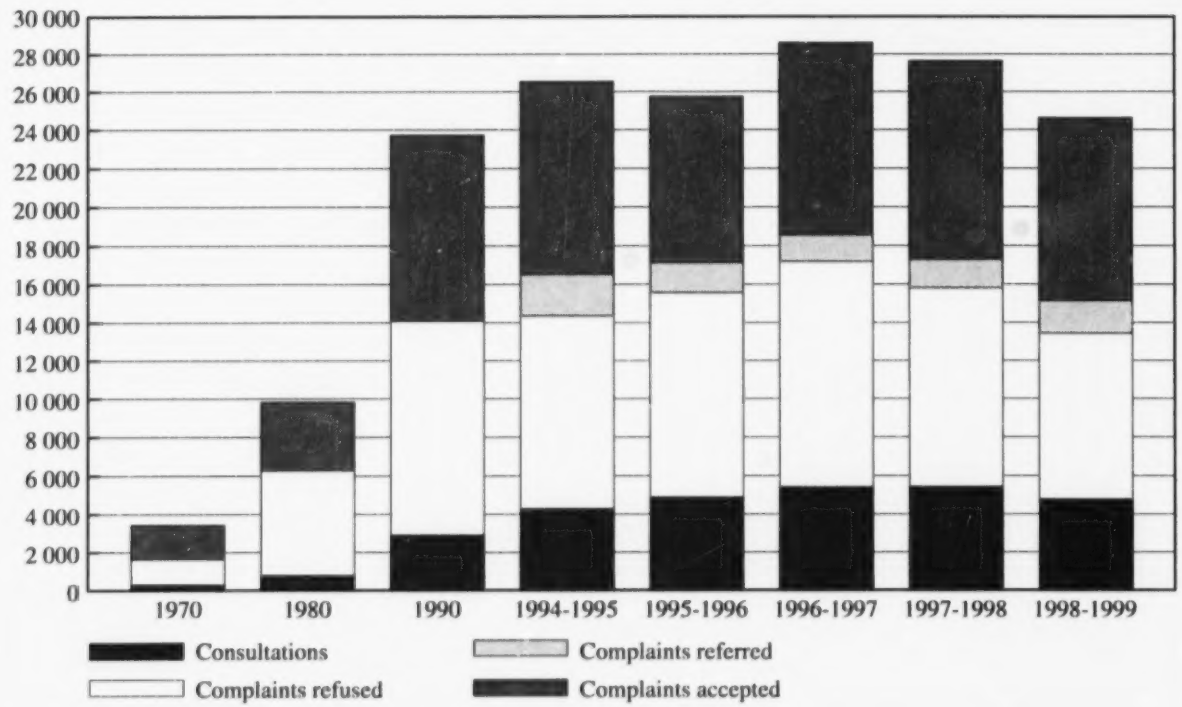
Tables 1 to 4 deal exclusively with complaints lodged and consultations carried out from April 1 to March 31 of the 1997-1998 and 1998-1999 years.

Tables 5 and 7, as well as Figures 2 and 3, present data for 1998-1999; investigations and consultations not completed as of April 1, 1998, are included in the 1998-1999 figures.

Table 6 presents data for the 1997-1998 and 1998-1999 years; investigations initiated before April 1 of the 1997-1998 and 1998-1999 years are included.

Figure 1

Complaint and Consultation Levels[1,2]



[1] Since the creation of the institution in 1969.

[2] The procedure for referred investigations was introduced in 1991-1992.

Table 1

Origin of Complaints and Consultations by Region						
Region	**Population[1]**		**1997-1998**		**1998-1999**	
Abitibi–Témiscamingue (08)	157,966	2.1%	501	1.8%	414	1.7%
Bas-Saint-Laurent (01)	208,535	2.8%	921	3.3%	694	2.8%
Centre-du-Québec (17)	221,702	3.0%	835	3.0%	418	1.7%
Chaudière–Appalaches (12)	390,098	5.3%	1,241	4.5%	896	3.7%
Côte-Nord (09)	106,532	1.4%	369	1.3%	357	1.5%
Estrie (05)	289,645	3.9%	951	3.4%	834	3.4%
Gaspésie–Îles-de-la-Madeleine (11)	107,005	1.4%	344	1.2%	262	1.1%
Lanaudière (14)	394,684	5.3%	1,079	3.9%	1,048	4.3%
Laurentides (15)	453,276	6.1%	1,715	6.2%	1,685	6.9%
Laval (13)	350,401	4.7%	946	3.4%	909	3.7%
Mauricie (04)	267,771	3.6%	914	3.3%	1,026	4.2%
Montérégie (16)	1,326,265	17.9%	3,241	11.7%	3,111	12.8%
Montréal (06)	1,833,085	24.7%	8,293	30.0%	7,483	30.7%
Nord-du-Québec (10)	37,476	0.5%	36	0.1%	27	0.1%
Outaouais (07)	319,054	4.3%	784	2.8%	799	3.3%
Québec (03)	659,858	8.9%	4,437	16.0%	3,603	14.8%
Saguenay–Lac-Saint-Jean (02)	296,537	4.0%	897	3.2%	693	2.8%
From outside Québec	...	...%	143	0.5%	125	0.5%
Unknown	...	...%	23	0.1%	12	–%
Total	**7,419,890**		**27,670**		**24,396**	

[1] Statistique Canada, *Estimated population 1997.*

Table 2

Service Times				
	1997-1998		**1998-1999**	
General Inquiries				
The same day	4,072	76%	3,456	74%
Within a week	5,156	96%	4,378	93%
Total	**5,347**		**4,683**	
Investigations Refused				
The same day	8,207	80%	7,342	85%
Within a week	10,006	97%	8,332	97%
Within a month	10,218	99%	8,529	99%
Within three months	10,273	99%	8,588	99%
Total	**10,294**		**8,596**	
Investigations Referred	**1,492**	...	**1,707**	...
Investigations Interrupted and Complaints withdrawn by Citizens	**1,755**	...	**1,553**	...
Investigations Completed				
Within a week	5,065	65%	4,256	63%
Within a month	6,260	81%	5,483	81%
Within three months	7,218	93%	6,320	94%
Within six months	7,612	98%	6,643	98%
Total	**7,742**		**6,755**	
Investigation Being Processed at the End ot the Fiscal Year	**1,040**	...	**1,102**	
Grand total	**27,670**		**24,396**	

Table 3

Consultations by Subject Area				
	1997-1998		**1998-1999**	
Government of Quebec departments and agencies	1,863	35%	1,586	34%
Government organizations not under the jurisdition of the Quebec Ombudsman	132	3%	186	4%
School system	41	1%	28	1%
Health and social services network	151	3%	163	3%
Municipalities	269	5%	167	4%
Federal departments and agencies, and those of other provinces	238	4%	172	4%
Private sector	2,642	49%	2,368	50%
Other	11	–%	13	–%
Total	**5,347**		**4,683**	

Table 4

Complaints Refused by Subject Area[1]				
	1997-1998		1998-1999	
Government organizations not under the jurisdiction of the Quebec Ombudsman	1,014	10%	895	10%
School system	170	1%	143	2%
Health and social services network	706	7%	630	7%
Municipalities	694	7%	473	6%
Federal departments and agencies, and those of other provinces	915	9%	813	9%
Private sector	3,199	31%	2,733	32%
Politicians and judges	512	5%	436	5%
Other adequate recourses available	1,159	11%	879	10%
Interventions deemed unnecessary	1,642	16%	1,432	17%
Other	283	3%	162	2%
Total	**10,294**		**8,596**	

[1] These complaints were refused because they did not fall under the jurisdiction of the Québec Ombudsman or because the latter felt that appropriate alternative recourse was available or that his intervention was not needed.

Table 5

Departments and Agencies Targeted in 1998-1999[1]

	Unsubstantiated complaints	Substantiated complaints	Others[2]	Complaints under investigation as of March 31, 1999	Total
Departments					
Affaires municipales	12	4	17	9	42
Agriculture, Pêcheries et Alimentation	11	4	3	9	27
Assemblée nationale	–	–	1	1	2
Conseil du trésor (Secrétariat du)	14	1	6	5	26
Conseil exécutif	–	–	2	1	3
Culture et Communications	3	–	2	4	9
Éducation	317	126	414	137	994
Emploi et Solidarité	1,542	191	1,674	139	3,546
Environnement et Faune	26	14	29	34	103
Famille et Enfance	2	2	45	39	88
Finances	5	1	6	4	16
Industrie, Commerce, Science et Technologie	5	1	5	1	12
Justice	112	34	144	25	315
Relations avec les citoyens et Immigration	49	25	174	117	365
Relations internationales	–	–	1	2	3
Ressources naturelles	7	1	25	9	42
Revenu	727	718	1,207	229	2,881
Santé et Services sociaux	16	18	66	23	123
Sécurité publique	1,111	526	1,453	231	3,321
Transports	14	6	35	10	65
Travail	4	–	7	1	12
Offices					
Bureau de révision de l'évaluation foncière du Québec	–	–	1	–	1
Committees					
Comité de déontologie policière	3	–	5	–	8

Table 5 (continuation)

Departments and Agencies Targeted in 1998-1999[1]	Unsubstantiated complaints	Substantiated complaints	Others[2]	Complaints under investigation as of March 31, 1999	Total
Commissioners					
Commissaire à la déontologie policière	10	1	13	6	30
Boards (Commissions)					
Commission administrative des régimes de retraite et d'assurances	52	18	33	10	113
Commission d'accès à l'information	14	2	10	6	32
Commission d'appel en matière de lésions professionnelles	6	5	95	8	114
Commission de la fonction publique	2	–	5	–	7
Commission de la santé et de la sécurité du travail	242	181	896	136	1,455
Commission de protection de la langue française	–	–	1	7	8
Commission de protection du territoire agricole du Québec	4	–	9	–	13
Commission des affaires sociales	8	2	53	2	65
Commission des normes du travail	40	3	45	14	102
Commission des transports du Québec	1	2	1	–	4
Commission des valeurs mobilières du Québec	3	3	3	2	11
Commission municipale du Québec	–	–	1	1	2
Commission québécoise des libérations conditionnelles	25	5	23	4	57
Institutions					
Curateur public	123	47	94	72	336
Inspecteur général des institutions financières	17	21	21	6	65
Vérificateur général	–	–	2	–	2
Offices					
Office de la langue française	3	–	1	–	4
Office de la protection du consommateur	12	–	20	1	33
Office des personnes handicapées du Québec	3	2	3	4	12
Office des professions du Québec	3	–	4	1	8

Table 5 (continuation)

Departments and Agencies Targeted in 1998-1999[1]	Unsubstantiated complaints	Substantiated complaints	Others[2]	Complaints under investigation as of March 31, 1999	Total
Boards (régies)					
Régie de l'assurance-maladie du Québec	178	51	67	33	329
Régie des alcools, des courses et des jeux	10	3	11	4	28
Régie des assurances agricoles du Québec	2	2	–	4	8
Régie des marchés agricoles et alimentaires du Québec	–	–	1	–	1
Régie des rentes du Québec	128	32	224	28	412
Régie du bâtiment du Québec	12	3	12	4	31
Régie du cinéma	–	–	1	–	1
Régie du logement	46	5	122	3	176
Corporations					
Société d'habitation du Québec	12	8	18	11	49
Société de financement agricole	4	1	2	1	8
Société de l'assurance automobile du Québec	384	144	497	71	1,096
Tribunals					
Tribunal administratif du Québec	–	–	8	2	10
Tribunal d'appel en matière de protection du territoire agricole	1	–	3	–	4
Tribunal du travail	2	–	2	–	4
Other[3]	3	–	6	4	13
Total	**5,330**	**2,213**	**7,629**	**1,475**	**16,647**

[1] Including complaints and consultation under way before and during the 1998-1999 year; they were completed during the year or they were still under investigation on March 31, 1999.

[2] Consultations, complaints referred, complaints refused, investigations interrupted, and complaints withdrawn by the citizen in question.

[3] Complaints and consultations that cannot be linked to any dep rtment or agency.

Figure 2

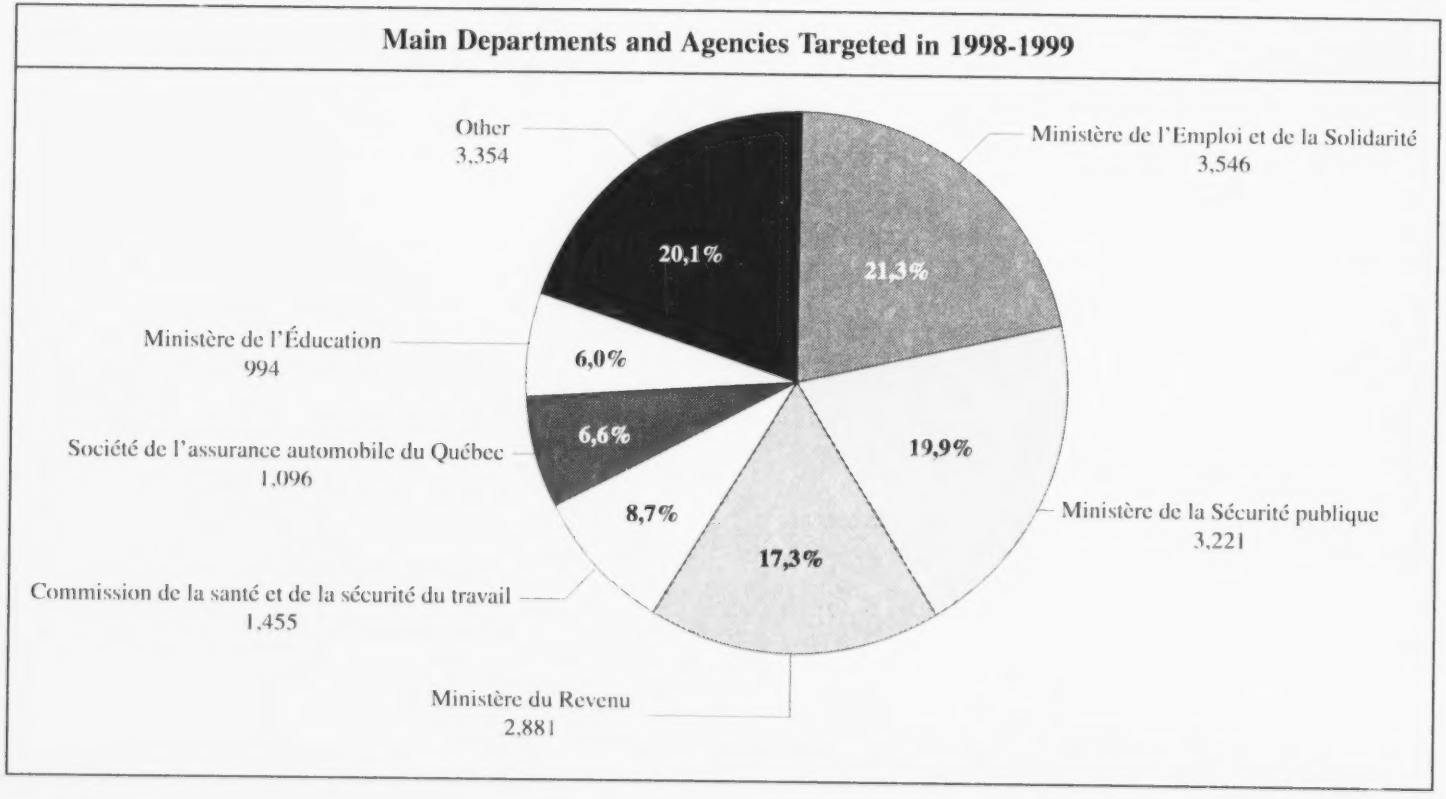

Main Departments and Agencies Targeted in 1998-1999
Other
3,354
20,1%
Ministère de l'Emploi et de la Solidarité
3,546
21,3%
Ministère de l'Éducation
994
6,0%
Société de l'assurance automobile du Québec
1,096
6,6%
19,9%
Ministère de la Sécurité publique
3,221
8,7%
17,3%
Commission de la santé et de la sécurité du travail
1,455
Ministère du Revenu
2,881

Figure 2

Main Departments and Agencies Targeted in 1998-1999

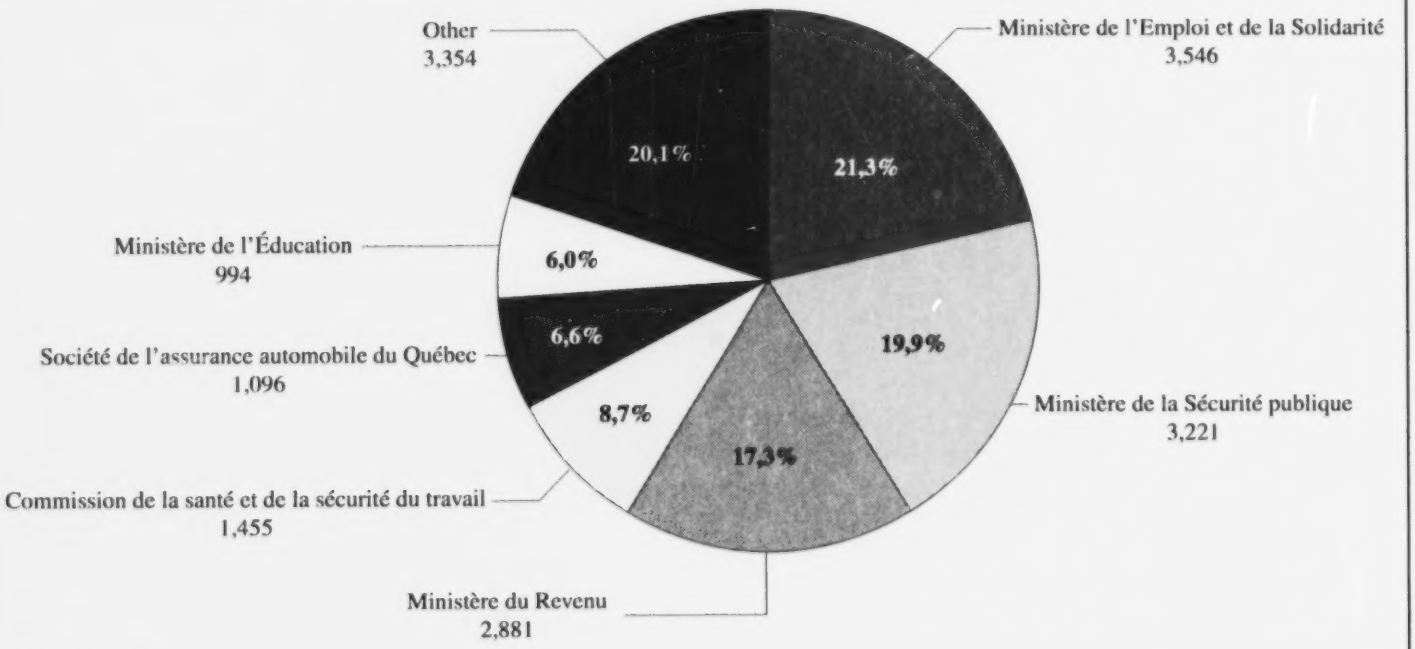


Table 6

Causes of Substantiated Complaints[1]				
	1997-1998		1998-1999[1]	
Abuse of power	3	–%	9	–%
Unreasonable or unfair actions	403	16%	311	14%
Actions not in compliance with laws, regulations or guidelines	245	10%	239	11%
Reprehensible behaviour or attitude	40	2%	44	2%
Unreasonable delays	624	24%	616	28%
Factual errors	129	5%	126	6%
Services not available	473	18%	193	9%
Inconsistencies	78	3%	47	2%
Inadequate information	141	5%	114	5%
Negligence or inaction	190	7%	178	8%
Other	254	10%	336	15%
Total	**2,580**		**2,213**	

[1] Investigations initiated before April 1, 1998, are included since they were completed by March 31, 1999.

Table 7

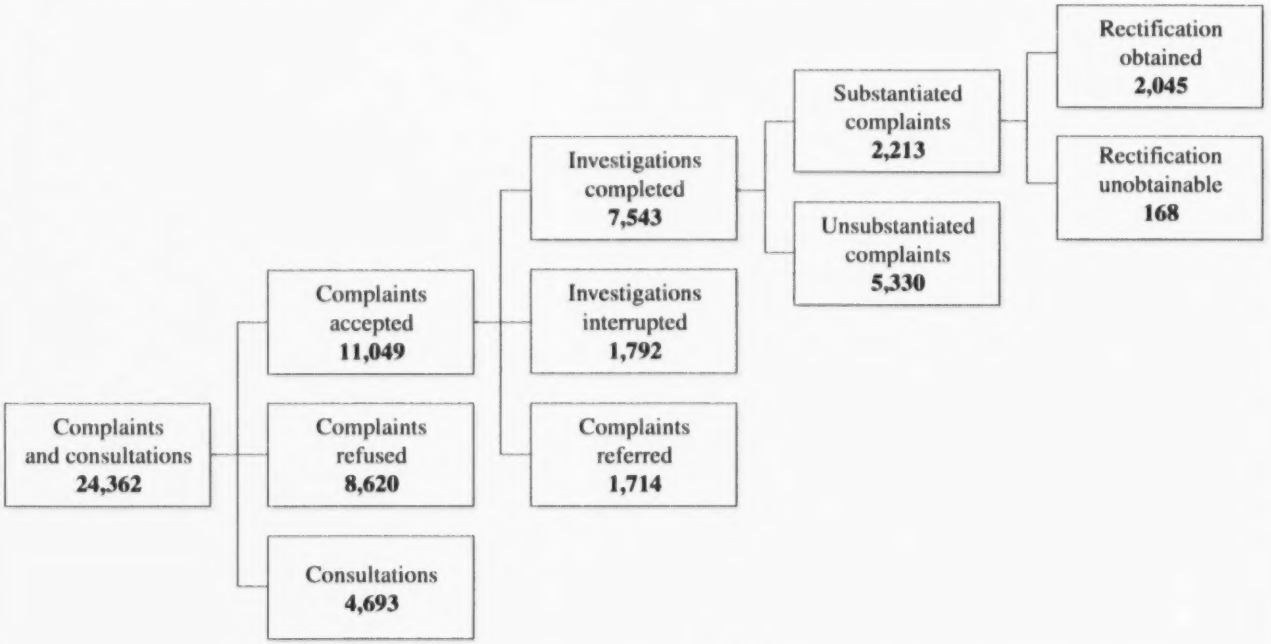
Substantiated Complaints in 1998-1999[1]

	Processed complaints	Justified complaints	Rate of justified complaints
Inspecteur général des institutions financières	38	21	55%
Ministère de la Santé et des Services sociaux	34	18	53%
Ministère du Revenu	1,445	718	50%
Commission de la santé et de la sécurité du travail	423	181	43%
Société d'habitation du Québec	20	8	40%
Ministère de l'Environnement et de la Faune	40	14	35%
Ministère des Relations avec les citoyens et de l'Immigration	74	25	34%
Ministère de la Sécurité publique	1,637	526	32%
Ministère des Transports	20	6	30%
Ministère de l'Éducation	443	126	28%
Curateur public	170	47	28%
Société de l'assurance automobile du Québec	528	144	27%
Commission administrative des régimes de retraite et d'assurances	70	18	26%
Ministère de la Justice	146	34	23%
Régie de l'assurance-maladie du Québec	229	51	22%
Régie des rentes du Québec	160	32	20%
Commission québécoise des libérations conditionnelles	30	5	17%
Ministère de l'Emploi et de la Solidarité	1,733	191	11%
Régie du logement	51	5	10%
Commission des normes du travail	43	3	7%

[1] Departments and agencies which were targets of at least 20 complaints.

Figure 3

Progression of Complaints and Consultations in 1998-1999[1]



[1] Including complaints and consultations prior to April 1, 1998, and excluding files not completed by April 1, 1999.

APPENDICES

Appendix 1

The Social Contract

The Québec Ombudsman's Social Contract

Modern governments must express their commitment to acting efficiently, fairly and democratically in everything they do. The Québec Ombudsman has listed guidelines below that should enable the government to measure its performance in achieving these imperatives, and to review and reorient practices and procedures that fail to measure up.

Ensuring Government Transparency

1.1 Inform citizens of decisions that concern them, taking care to explain the reasons for the decisions in terms that can be understood.

1.2 Give citizens all the information they need in a timely manner.

1.3 Ensure, where applicable, that citizens clearly understand the information conveyed to them.

1.4 Indicate clearly to clients the rights and recourse available to them with respect to an administrative decision, including recourse to the Québec Ombudsman or to any other public entity concerned with the protection of rights.

1.5 Promote the publication of government information, and consider secrets a real exception to the general rule.

1.6 Consult the client group concerned when government programs are developed and implemented, as well as when changes are made to these programs.

1.7 Get the opinion of people who are representatives of the client group when preparing forms and information folders, and use simple, everyday language in the wording of these documents.

Promoting Access to Government Services

2.1 Implement reception and information services promoting a personalized and respectful approach to dealing with individuals, and one that also takes into account the limitations of older or handicapped client groups, as well as linguistic barriers.

2.2 Plan telephone services in such a way as to be able to meet demand as efficiently as possible, so that citizens are not faced with overloaded telephone lines.

2.3 Only use interactive voice response systems when these can better serve clients and provide more complete information.

2.4 Ensure that office setup respects the public's right to privacy in facilities where public services are delivered.

2.5 Ensure that office setup is not a barrier to government services for people with physical disabilities.

2.6 In determining office hours, make allowance for new social and family realities.

2.7 Seek to provide one-stop service and, as needed, consider amalgamating administrative divisions if this can contribute to improving client accessibility and service quality. On the other hand, do not at all costs maintain an operation or unit of questionable relevance.

Ensuring Government Decisions Affecting Citizens Are Legal and Reasonable

3.1 Abide by special statutes and regulations as well as regular legislation.

3.2 Promote respect for basic rights and freedoms in each action that is taken.

3.3 When the decision-making process is discretionary, establish a framework for decisions using criteria and measures that allow their objective application.

3.4 Make decisions that not only comply with the law, but that are also reasonable, fair and appropriate.

3.5 Employ a decision-making process that prevents arbitrary decisions or abuse of power.

3.6 Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.

3.7 Avoid becoming entrenched in a narrow interpretation of the law, a regulation or other rule, but rather emphasize an open approach whereby the true sense, spirit and intention of these is respected, as stated in the *Interpretation Act*.

Respecting the Rules of Natural Justice

4.1 Avoid making decisions without giving citizens the chance to express their point of view or the opportunity to provide all relevant information.

4.2 Take the initiative to ask citizens for the paperwork or details missing from the applications or claims they make rather than turning down or holding up their applications without further explanation.

4.3 Help a citizen making a claim to present a complete file, so that the decision handed down reflects all relevant information and circumstances.

4.4 Reject all forms of partiality in decisions that are made and any pursuit of illegitimate objectives. Avoid all conflicts of interest.

4.5 Avoid all forms of discrimination or unequal treatment.

Serving Citizens

5.1 Always respect the spirit of the law when designing, implementing or updating a government program. According to the *Interpretation Act*, a law is presumed to eliminate prejudice.

5.2 Adopt rules and procedures that promote the well-being of citizens rather than mere bureaucratic expediency.

5.3 When developing a program, reduce as much as possible the risk of flaws and deficiencies that arise from poor administration.

5.4 Allocate resources so as to ensure that citizens are not the first and only victims of budget cuts.

Understanding Citizens and Making Their Lives Easier

6.1 Survey client group in order to establish who uses the service and what their needs and expectations are.

6.2 Create user committees.

6.3 Take into account the reasons for client dissatisfaction when changing a service or program. Do not base change solely on the dissatisfaction of personnel.

6.4 Set up advisory committees made up of employees who are in direct contact with users.

6.5 Eliminate unnecessary procedures and formalities as well as all unnecessary paperwork.

Respecting Personal Dignity

7.1 Avoid treating citizens like numbers. Try to understand their special needs and why they may be vulnerable.

7.2 Make relations with citizens as human and personal as possible.

7.3 Avoid treating citizens who claim a service or benefit as if they were seeking privileges and not rights.

7.4 Do unto others as you would have them do unto you.

7.5 When replying to inquiries, direct citizens to the appropriate service rather than referring them to various resources without knowing which one will provide a useful answer.

7.6 When it is necessary to develop systems for the detection and prevention of fraud, ensure that the rights of citizens are respected and systematically discard any detection methods that are ineffectual or unnecessarily intrusive.

7.7 Avoid excessive administrative rigidity in all dealings with citizens, while remaining thorough.

7.8 Take into consideration the aspirations, characteristics and conditions of native peoples and cultural communities.

Doing the Utmost to Act Responsibly

8.1 Provide an opportunity for decisions to be reviewed or appealed.

8.2 Establish a complaints-handling office as independent as possible from the decision-maker whose decisions are being examined.

8.3 Establish, as needed, conciliation or mediation mechanisms.

8.4 Keep promises made to citizens.

8.5 Avoid watering down responsibilities by systematically referring them to another hierarchical level or administrative division.

8.6 Provide services and information, and convey decisions, within a reasonable length of time.

8.7 Continuously seek to shorten waiting times.

8.8 Intervene rather than stand by when other employees are responsible for a delay, and encourage them to act with diligence.

8.9 Determine the real causes of a deficiency or act of negligence, so as to avoid systematically using the excuse of budget cuts to justify shortcomings.

8.10 Draw up a detailed code of ethics that is practical and not limited to generalities and wishful thinking; make clients aware of the code.

8.11 Never consider a client's dissatisfaction as mere criticism, but rather as useful feedback that will make improvement possible.

8.12 Make clients feel important, and recognize work that has been well done by employees.

8.13 Bring decision-making as close as possible to clients.

Appendix 2

List of Government Departments and Organizations under the Jurisdiction of the Québec Ombudsman

LIST OF GOVERNMENT DEPARTMENTS AND ORGANIZATIONS UNDER THE JURISDICTION OF THE QUÉBEC OMBUDSMAN

Agence de l'efficacité énergétique
Assemblée nationale *(National Assembly)*
Bibliothèque nationale du Québec
Bureau d'audiences publiques sur l'environnement
Bureau de la protection civile
Comité catholique du Conseil supérieur de l'éducation *(Catholic Committee of the Conseil supérieur de l'éducation)*
Comité de déontologie policière
Comité de la santé mentale du Québec
Comité de révision de l'utilisation des médicaments en milieu ambulatoire
Comité de révision sur la langue d'enseignement
Comité protestant du conseil supérieur de l'éducation *(Protestant Committee of the Conseil supérieur de l'éducation)*
Commissaire à la déontologie policière *(Police Ethics Commissioner)*
Commissaire aux plaintes en matière de santé et de services sociaux *(Health and Social Services Complaints Commissioner)*
Commissaire de la construction *(Building Commissioner)*
Commission administrative des régimes de retraite et d'assurances
Commission consultative de l'enseignement privé
Commission d'accès à l'information
Commission d'appel pour les autochtones du Québec
Commission d'évaluation de l'enseignement collégial
Commission de la fonction publique du Québec
Commission de la qualité de l'environnement Kativik
Commission de la santé et de la sécurité du travail
Commission de l'équité salariale
Commission de protection de la langue française
Commission de protection du territoire agricole du Québec
Commission de toponymie
Commission des lésions professionnelles
Commission des normes du travail
Commission des transports du Québec
Commission municipale du Québec
Commission québécoise des libérations conditionnelles
Commission québécoise d'examen (troubles mentaux)
Conseil consultatif de la lecture et du livre
Conseil consultatif de pharmacologie
Conseil consultatif du travail et de la main-d'œuvre

Conseil de l'Ordre national du Québec
Conseil de la famille et de l'enfance
Conseil de la justice administrative
Conseil de la langue française
Conseil de la magistrature
Conseil de la santé et du bien-être
Conseil de la science et de la technologie du Québec
Conseil des aînés
Conseil des relations interculturelles
Conseil d'évaluation des technologies de la santé du Québec
Conseil du statut de la femme
Conseil du trésor (le personnel seulement)
Conseil médical du Québec
Conseil permanent de la jeunesse
Conseil supérieur de l'éducation
Coroner *(Coroner)*
Corporation d'hébergement du Québec
Cour du Québec *(Court of Québec)*
Curateur public du Québec (Le) *(Public Curator)*
Éditeur officiel du Québec *(Québec Official Publisher)*
Emploi-Québec
Faune et parcs Québec
Fonds d'aide à l'action communautaire autonome
Fonds d'aide aux recours collectifs
Fonds d'assurance-prêts agricoles et forestiers
Fonds de développement du marché du travail
Fonds de développement régional
Fonds de lutte contre la pauvreté par la réinsertion au travail
Inspecteur général des institutions financières *(Inspector General of Financial Institutions)*
Institut de la statistique du Québec
Institut de tourisme et d'hôtellerie du Québec
Ministère de la Culture et des Communications
Ministère de la Famille et de l'Enfance
Ministère de la Justice
Ministère de la Santé et des Services sociaux
Ministère de la Sécurité publique
Ministère de la Solidarité sociale
Ministère de l'Agriculture, des Pêcheries et de l'Alimentation
Ministère de l'Éducation
Ministère de l'Environnement
Ministère de l'Industrie et du Commerce
Ministère des Affaires municipales et de la Métropole

Ministère des Finances
Ministère des Régions
Ministère des Relations avec les citoyens et de l'Immigration
Ministère des Relations internationales
Ministère des Ressources naturelles
Ministère des Transports
Ministère du Conseil exécutif
Ministère du Revenu
Ministère du Travail
Ministre délégué à la Famille et à l'Enfance *(Minister for Child and Family Welfare)*
Ministre délégué à la Santé, aux Services sociaux et à la Protection de la jeunesse *(Minister for Health, Social Services and Youth Protection)*
Ministre délégué à l'Administration et à la Fonction publique *(Minister for Administration and the Public Service)*
Ministre délégué à l'Autoroute de l'information et aux Services gouvernementaux *(Minister for the Information Highway and Government Services)*
Ministre délégué à l'Industrie et au Commerce *(Minister for Industry and Trade)*
Ministre délégué au Tourisme *(Minister for Tourism)*
Ministre délégué aux Affaires autochtones *(Minister for Native Affairs)*
Ministre délégué aux Affaires intergouvernementales canadiennes *(Minister for Canadian Intergovernmental Affairs)*
Ministre délégué aux Transports *(Minister for Transport)*
Ministre d'État à l'Économie et aux Finances *(Minister of State for the Economy and Finance)*
Office de la langue française
Office de la protection du consommateur
Office des personnes handicapées du Québec
Office des professions du Québec
Placements Québec
Publications du Québec (Les)
Régie de l'assurance-dépôts du Québec
Régie de l'assurance-maladie du Québec
Régie des alcools, des courses et des jeux
Régie des assurances agricoles du Québec
Régie des marchés agricoles et alimentaires du Québec
Régie des rentes du Québec
Régie du bâtiment du Québec
Régie du cinéma
Régie du logement
Secrétariat à la condition féminine
Secrétariat à l'action communautaire autonome du Québec
Secrétariat à la politique linguistique
Secrétariat à la réforme électorale

Secrétariat de l'autoroute de l'information
Société de financement agricole
Société de la faune et des parcs du Québec
Société de l'assurance automobile du Québec
Société d'habitation du Québec
Statistique Québec
Sûreté du Québec
Tourisme Québec
Tribunal administratif du Québec *(Administrative Tribunal of Québec)*
Tribunal des droits de la personne *(Human Rights Tribunal)*
Tribunal des professions *(Professions Tribunal)*
Tribunal du travail *(Labour Court)*
Vérificateur général du Québec *(Auditor General)*

Appendix 3

Bills and Draft Regulations

During the 1998-1999 fiscal year

Twelve draft regulations were analyzed.

The Québec Ombudsman's comments were addressed to the officer responsible concerning three of these draft regulations:

① *Regulation respecting the definition of resident in Québec*

② *Regulation to amend the Regulation respecting the tuition fees and special fees which a general and vocational college must charge*

③ *Regulation respecting the conditions for the certification of notaries* as regards the institution or review of protective supervision and mandates in anticipation of incapacity

Two draft bills and 16 bills were analyzed.

Four briefs were presented to the parliamentary committee concerning:

① An *Act respecting income support, employment assistance and social solidarity*

② An *Act to amend the Act respecting health services and social services and amending various legislative provisions*

③ An *Act to amend the Code of Civil Procedure and other legislative provisions in relation to notarial matters*

④ An *Act to amend the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the protection of personal information in the private sector and other legislative provisions*

The Québec Ombudsman's comments were addressed to the minister responsible for the draft legislation in the following three cases:

① An *Act to amend the Act respecting the conservation and development of wildlife and the Act respecting commercial fisheries and aquaculture*

② An *Act to amend the Automobile Insurance Act*

③ An *Act to amend the Professional Code*

Since the beginning of the 1999-2000 fiscal year

Five draft regulations were analyzed.

The Québec Ombudsman's comments were addressed to the officer responsible in the following two cases:

① *Regulation respecting income support*

② *Regulation to amend the Regulation respecting houses of detention*

A draft bill and 25 bills were analyzed.

The Québec Ombudsman's comments were addressed to the minister responsible in the following six cases:

① An *Act to amend the Taxation Act and other legislative provisions*

② An *Act to amend the Automobile Insurance Act and other legislative provisions*

③ *Midwives Act*

④ An *Act to amend various legislative provisions concerning de facto spouses*

⑤ An *Act to amend certain legislative provisions respecting the Public Curator*

⑥ An *Act to amend the Act respecting labour standards and other legislative provisions concerning work performed by children*

HOW TO CONTACT THE QUÉBEC OMBUDSMAN

Québec (siège social)

525, boul. René-Lévesque Est
Bureau 1.25
Québec, Québec G1R 5Y4

Phone: (418) 643-2688
Toll-free: 1 800 463-5070
Fax: (418) 643-8759

Montréal

1, rue Notre-Dame Est
Bureau 11.40
Montréal, Québec H2Y 1B6

Phone: (514) 873-2032
Toll-free: 1 800 361-5804
Fax: (514) 873-4640

E-mail
protecteur.citoyen@pc.gouv.qc.ca

Web site
www.ombuds.gouv.qc.ca

QUÉBEC

Québec Ombudsman
525, boul. René-Lévesque Est
Bureau 1.25
Québec, Québec G1R 5Y4
Phone : (418) 643-2688
Toll-free : 1 800 463-5070
Fax : (418) 643-8759
E-mail : protecteur.citoyen@pc.gouv.qc.ca
Web site : www.ombuds.gouv.qc.ca

MONTRÉAL

Québec Ombudsman
1, rue Notre-Dame Est
Bureau 11.40
Montréal, Québec H2Y 1B6
Phone : (514) 873-2032
Toll-free : 1 800 361-5804
Fax : (514) 873-4640
E-mail : protecteur.citoyen@pc.gouv.qc.ca
Web site : www.ombuds.gouv.qc.ca